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MORRISON'S ^{ct} CORPORATION LAW

COLORADO

By
R. S. MORRISON
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FOURTH EDITION
By
WILLIAM H. COURTRIGHT

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THE W. H. COURTRIGHT PUBLISHING CO.
DENVER, COLORADO

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PREFACE TO FOURTH EDITION

Since the publication of the Third Edition, Colonel Morrison departed this life in an accident on the Interurban between Boulder and Denver.

The third edition being exhausted, the demand makes it necessary to bring out this new edition; and the undersigned undertook the work of preparing the new edition, thinking that the original style and character of the work of the late Colonel Morrison could in this way be best retained and maintained.

2-1-48 - 11410
All new Legislative Enactments have been added or substituted and the Colorado Decisions affecting corporations cited and quoted therefrom. A form for a Declaration of Trust and Certificate of shares for a Common Law Corporation has been added, as well as a little preliminary matter.

The object of the work is to supply the lawyers and others interested in corporations, the Statutory Law and the Judicial Decisions affecting same as well as all the Forms that will ordinarily be used.

The Statutes reprinted and referred to are the sections of the new Mills Annotated Statutes.

The work is submitted to the Bench, Bar and Others with the hope that it will be found a complete commentary on the Corporation Law of the State of Colorado.

WILLIAM H. COURTRIGHT.

Denver, Colorado,
September 7, 1922.

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MORRISON'S CORPORATION LAW

CHAPTER 1.

INTRODUCTORY.

Definition.

A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law; and it possesses only those properties and powers which are conferred upon it by its creator. Its existence depends upon a legislative act, to which it either mediately or immediately owes its vitality. It is a collection of individuals united into one body, having perpetual succession under the corporate name, and vested by the policy of the law with the capacity to transact certain kinds of business like a natural person; and such a union can only be effected under a grant of privileges from the sovereign power of the state.

Properties of a Corporation.

Among the properties conferred upon a corporation, in order to effect the object of its creation, the most important are immortality and individuality; properties, by means of which, a perpetual succession of many persons is considered as the same, and may act as a single individual. The immortality of a corporation means no more than a continued succession of members during the period allotted for the existence of the corporation.

Separate Existence of a Corporation.

The powers and franchises with which a corporation aggregate is endowed, are regarded as subsisting in the corporation itself, as distinctly as if it were a real personage. The members individually are lost in the corporate existence, and it is the legal being which acts and transacts business; and this legal being, or corporate body, is separate and distinct in its rights and obligations from the individuals who compose it. An individual corporator may sue his corporation, and the corporation may sue a corporator.

In What Sense Deemed "Persons."

In certain respects, and for certain purposes, corporations are deemed "persons." The general rule of construction is, that corporations are entitled to the rights or the remedies conferred by a statute upon "persons" if they fall within the general reason and design of the act. They are deemed "persons" not only for civil purposes, but also within the purview of penal statutes. A corporation cannot be deemed a moral agent, and, like a natural person, be subjected to personal suffering. Malice and willfulness cannot be predicated of a corporation, though they may be of its members.

Purpose and Use.

Corporations are created in order to gain the united aid of many persons for the successful promotion of some design for the public good. It is to accomplish this object, that the legislature bestows the charter and properties of individuality on a collective and changing body of men.

Public and Private Corporations Distinguished.

Public corporations are generally esteemed such as are created for political purposes only, with powers to be exercised for the public good. But strictly speaking, public corporations are such only as are founded by the government for public purposes, where the whole interests belong also to the government. Corporations not created for political purposes, or the whole interests in which do not belong to the government creating them, are private. A division of corporations into three classes, is as follows: 1. Public Municipal Corporations, the object of which is to promote the public interests; 2. Public Utility Corporations, technically private, but of a *quasi* public character, having in view some public enterprise in which the public interests are involved; and over which the public, the government, may to a certain extent regulate and control; and 3. Corporations strictly private.

Quasi Corporations.

There are many instances, in the law, of collective bodies of men, coming under one general description, endowed with corporate capacity in some particulars expressed, but who have, in no respect, the capacities incident to a corporation. These bodies are usually denominated *quasi* corporations.

Municipal Corporations.

At common law, a corporation aggregate for municipi-

pal purposes, is investing the people of a place with the local government thereof; instances of which are, incorporated villages, towns and cities. Generally speaking, municipal corporations are created in this country at the will of the legislature, for the purpose of aiding in the administration of the government of the state, but chiefly to administer the local affairs of the city, town or village, which is incorporated.

What Bodies Are Not Corporations.

Companies or societies not expressly sanctioned by the legislature, pursuant to some special or general law, are usually deemed nothing more than ordinary partnerships. Many associations are now operated as trust estates, commonly known as "Common Law Corporations," "Declarations of Trust," "Common Law Companies," Etc.

Power to Create Corporations.

The sovereign authority only is competent to create a corporation. Formerly, in England, both public and private corporations were created by royal prerogative, without the intervention of parliament; but the usual mode in which corporations are now called into being, is by authority of parliament; and, in the United States, they can only be created by authority of the legislature. A corporation cannot be constituted by agreement of parties.

Corporations by Royal Charter.

Most of the corporations that arose in England during the middle ages were created by Royal Charter, in the form of letters patent, under the great seal; and a few existing corporations in this country owe their origin to the English Crown under the colony administration.

Created by Acts of Incorporation.

In the United States all corporations, public and private, exist and can only exist by virtue of legislative sanction.

The general incorporation laws of Colorado are very liberal. In fact, too liberal in many respects.

Constitutional Provisions—No Special Charters.

Sec. 2. *What charters may be granted.* No charter of incorporation shall be granted, extended, changed or amended by special law, except for such municipal, charitable, educational, penal or reformatory corporations as are or may be under the control of the state; but the general assembly shall provide by general laws for the organization of corporations hereafter to be created.—Constitution, Art. XV.

Sec. 3. *Power to revoke, alter or annul charter.* The general assembly shall have the power to alter, revoke or annul any charter of incorporation now existing and revocable at the adoption of this constitution, or any that may hereafter be created, whenever in their opinion it may be injurious to the citizens of the state, in such manner, however, that no injustice shall be done to the corporators.—Const., Art. XV.

In compliance with the above section 2, all corporations in Colorado are organized under general laws. A few had been created by special Acts of the Territorial Legislature before the amendment of 1867 to the Organic Act forbidding it.—Rev. Stats. of 1868, p. 40.

Other Constitutional provisions are Sec. 1 of Art. 2, validating prior incorporations; Secs. 4, 7 and 11 of Art. 2, confined to railroads and street railroads; Sec. 8, concerning Eminent Domain; Sec. 9, as to paid up stock, printed on p. 205; Sec. 10, as to foreign corporations, printed on p. 386, cited later under their proper heads.

The corporation Acts are codified as Chapter 34 of Mills Annotated Statutes of Colorado, entitled "Corporations," with special chapters for Banks, Building and Loan Associations, Railroads, Toll Roads and Insurance Companies.

This codification, while it brings most of the Acts together under proper heads, does not and could not relieve the law itself from the charge of obscurity, repetition and inconsistency, in many of its provisions.

Who May Incorporate.

The language of the statute is that "any three or more persons who may desire to form a company" by certain proceedings hereinafter referred to may become a body corporate.

The word person in its usual and ordinary legal acceptance, when used in acts which imply the assumption of contract liability, means an adult man or woman. Such person need not be a citizen nor even a resident of the State.—*Humphreys v. Mooney*, 5 Colo. 283.

There are no restrictions upon the capacity of married women to act as incorporators.

As to whether infants could become incorporators, it is only necessary to say that such attempted action would be irregular, though doubtless the infancy of one or more of the organizers would not invalidate the articles of association except in case of direct attack upon the Charter by the proper officer of the State.

The disabilities of infancy attach to stock purchases by infants and the company may refuse to register a transfer to an infant.—*Cook*, Sec. 250.

No disability seems to be placed upon aliens except that the organizers of an association "not for pecuniary profit" must be citizens of the United States.

A corporation already existing, or a partnership, society or other *quasi* corporation, would not be a person within the meaning of the statute.

A corporation cannot without express statutory authority become a member of a partnership.—*Fechteler v. Palm*, 133 Fed. 462; *People v. North Star Sugar Ref. Co.*, 121 N. Y. 582, 24 N. E. 834, 18 Am. St. R. 843, 9 L. R. A. 33.

Number of Incorporators.

The number of incorporators may not be less than three, but there is no maximum limit to the number that may be used. In practice the number of names used is generally from three to seven. But after the indispensable number of three the use of more names is a matter of convenience or sentiment.

Bank Corporations the board of directors cannot exceed twenty-one.—Sec. 328 M. A. S.

Usually the incorporators are the same persons intended to act as directors for the first year, but it is not essential that they should be, nor that more than three persons sign, no difference what the number of directors.

Articles of Incorporation or Charter.

Corporations were originally created by Act of Parliament or by grant from the King. In this country, by special legislative Act. The statute or document which gave them the legal right to exist was called the Charter.

But at this time, both in England and in the several States, practically all corporations assume their corporate name and enter upon their corporate life by filing what are called their Articles of Incorporation or Articles of Association. These Articles take the place of the ancient Charter, but that word is retained in use, and the Articles are often spoken of as the Charter both by attorneys and the community generally.

The Charter of a private corporation is a contract with the State, the obligation of which cannot be impaired by subsequent legislation. But this does not prevent restrictions justified in the exercise of the police power of the State.—*Platte C. & M. Co. v. Dowell*, 17 Colo. 376, 30 p. 68:

Cases are quoted in *U. S. v. N. Securities Co.*, 120 Fed. 727, to the effect that no purpose, however expressed in its Charter, is lawful where it becomes hostile to any Statute

binding it in the jurisdiction, in this instance the Interstate Commerce Act.

In the construction of a Charter the interpretation should be that which is most favorable to the public.—Central Road Co. v. People, 5 Colo. 39.

Purposes of Incorporation.

The Colorado Statute allows the formation of corporations for "any lawful purpose," which phrase is as sweeping as any that could be used. These words include any business or project not forbidden by law and not contrary to public policy.

Certain things are required of all corporations, but as the statutes impose details upon the formation of one kind, which are different from those required of another kind, it forces a division into classes, in order to accommodate these provisions. This division is almost entirely arbitrary, because in many instances there is no reason whatever for the distinction made by the terms of the statute.

Classes of Corporations.

The classification we have adopted is as follows:

1. Business Corporations. This term we use to include mercantile and manufacturing companies of all kinds.—Chapter 3.
2. Mining, Milling and Tunnel Companies.—Chapter 4.
3. Ditch Companies.—Chapter 5.
4. Flume Companies.—Chapter 6.
5. Pipe Line Companies.—Chapter 7.
6. Water Users' Associations.—Chapter 8.
7. Bridge and Ferry Companies.—Chapter 9.
8. Banks.—Chapter 10.
9. Savings Banks.—Chapter 11.
10. Trust Companies.—Chapter 12.
11. Surety Companies.—Chapter 13.

12. Title Guaranty Companies.—Chapter 14.
13. Toll Roads.—Chapter 15.
14. Telegraph and Telephone Companies.—Chapter 16.
15. Gas Companies.—Chapter 17.
16. Railroads.—Chapter 18.
17. Insurance Companies.—Chapter 19.
18. Building and Loan Associations.—Chapter 20.
19. Corporations Not for Profit.—Chapter 21.

Of these classes generally it is required that they make, acknowledge and file their Articles of Incorporation; but from this point the requirements are so variant that it is time lost to capitulate the distinctions till we reach each one under its proper title.

Municipal Corporations are, of course, a class outside of the general incorporation law.—Chapter 72.

CHAPTER II.

CORPORATE POWERS.

Sec. 984 M. A. S. Enumeration of Corporate Powers.

1. *Succession.* Corporations formed under this Act shall be bodies corporate and politic in fact and in name, by the name stated in such certificate, and by that name have succession for the period for which they are organized;

2. *Suits.* May in any court of law or equity in this State sue and be sued;

3. *Seal.* May have a common seal, which they may alter or renew at pleasure, by filing an impression of the same in the office of the Secretary of State;

4. *Own Property.* May own, possess and enjoy so much real and personal estate, as shall be necessary for the transaction of their business, whether acquired by purchase, grant, devise, gift or otherwise;

5. *Power to Sell.* And may from time to time sell and dispose of the same or any part thereof, when not required for the use of the corporation.

6. *Borrow and Pledge.* They may borrow money and pledge their franchises and property, both real and personal, to secure the payment thereof;

7. *Incidental Powers.* And may have and exercise all the powers necessary and requisite to carry into effect the objects for which they may be formed, as named in their certificate of incorporation.—R. S. 1908, § 854.

Powers so by statute granted need not be claimed in the articles of incorporation, although the repetition of them in the charter is harmless, and some of them must almost necessarily be repeated in stating the object or purposes of the intended company.

1. CORPORATE SUCCESSION.

A change in the directory or stockholders makes no change whatever in the status of the corporation. But if a new incorporation takes over the property by collusion with the old company, it becomes the successor to the original and is liable to perform its contracts and pay its debts.—Higgins v. California Co., 122 Cal. 373, 55 Pac. 155, 147 Cal. 363, 81 Pac. 1070; *McCourt v. Singers-Bigger*, 145 Fed. 103; *Strahm v. Fraser*, 32 Cal. App. 447, 163 Pac. 680.

Where an individual forms a corporation and transfers to it his business in exchange for stock, the corporation becomes presumptively liable for the previous debts of the business without express assumption by the company.—*Curtis v. Smelter Bank*, 43 Colo. 391, 96 Pac. 172; *Du Vivier v. Gallice*, 149 Fed. 118.

Where a corporation conveys all its assets under questionable circumstances or one corporation becomes successor to another pending a suit for damages which later results in judgment, the assets of the company may become subject to such judgment.—*Moffat v. Smith*, 101 Fed. 771; *McWilliams v. City of New York*, 134 Fed. 1015.

Where an insolvent partnership organized a corpora-

tion to which it transferred its assets but kept on doing business with no apparent change in the management the transfer was held void as against the creditors of the firm.—Colorado T. & T. Co. v. Acres Co., 18 Colo. App. 253, 70 Pac. 954.

Where a corporation had leased its mines to a party who covenanted to form a leasing company to work the property the stock of which leasing company was largely issued to the mining company it was held that there was no such relationship as made the companies identical, and that the mining company was not liable for the debts of the leasing company.—United Mines Co. v. Hatcher, 79 Fed. 517.

In Colorado Springs Co. v. Albrecht, 22 Colo. App. 201, 123 Pac. 957, it was held that the company organized, among other things, to take over the assets of a former company was not *ipso facto* bound for its predecessor's torts. There must have been either an assumption of liability or facts upon which assumption would be implied or a purchase in fraud of creditors.

2. POWER TO SUE AND BE SUED.

Sec. 985 M. A. S. May Sue and Be Sued as Natural Persons.

Suits may be instituted and prosecuted by and against any corporation formed or recognized under this Act, in the same manner and in like cases as natural persons.—R. S. 1908, § 855.

This power would exist as of course without statutory grant under the Bill of Rights; to sue, to protect their own rights; to be sued, to protect the rights of others dealing with and wronged by them.

The Court of Appeals in Thompson v. Commercial Union, 20 Colo. App. 334, 78 Pac. 1073, held that a party who had collected his company's money could not "escape liability by denying its capacity to sue." In American Smelting Co. v. People, 34 Colo. 249, 82 Pac. 531, the court

declined to pass on the point as to whether the right to defend a suit could be taken away, but in *Ohio-Colo. Co. v. Elder*, 47 Colo. 67, 99 Pac. 42, it held that a corporation could not institute a suit where in default on the license tax.

The Colorado Bill of Rights at the outstart is thoroughly emasculated in almost every one of its clauses and there is but little left of it on such construction as it received by a bare majority of the court in the case last cited.

Federal Jurisdiction.

The matter is material on the question of Federal jurisdiction, any foreign corporation sued in a State court by a citizen of the State when the controversy concerns \$3,000 in value, having the power to remove the case to a Federal court or to begin by suit in the Federal court where the necessary value and diversity of citizenship exists.

Domestic corporations bringing suit, except in cases of a Federal character, must proceed in the local court, and when sued by either residents or non-residents must accept the local jurisdiction.

This protection by the Federal courts is a reason in favor of a foreign organization because it is a practical guaranty against local prejudice, but it is offset by the fact that a foreign corporation may be sued by attachment for any debt, while the property of a domestic corporation is exempt from attachment except in case of fraud.—Code, Sec. 98.

Venue—Service of Process.

Any corporation having a cause of action may bring suit in the county of its residence or in the county where the defendant resides or where the cause of action accrues.

The Code section now in force requires service in suits against domestic corporations (other than railroads and

municipal) to be upon the president or other chief officer, secretary, treasurer, cashier "or other general agent thereof." If no such officer found, then service may be had on any stockholder found in the county.—Sec. p. 336.

3. SEAL.

There is a common impression that every corporation is required to file an impression of its seal with the Secretary of State. This is not the fact. It is only required to file such impression when it alters or renews the original seal adopted.

The seal, or common seal as it is called, though the adjective has no longer any proper function, is almost invariably by impression on wax or paper. As to whether a facsimile or engraving will pass for a seal the authorities are conflicting, and the use of such device should be avoided.—*Royal Bank v. Junction Co.*, 100 Mass. 444; *Mitchell v. Union Co.*, 45 Me. 104; *Cook, Stock*, Sec. 722.

At common law corporations could do little or nothing except under the evidence or authority of their seal. But the rule is not now so severe. As they can make practically any oral contract which an individual can make the seal can have no place in such class of dealing.

As a matter of course, in any conveyance of their real estate a seal is necessary. But a scroll seal may bind them if they have chosen to discard the common seal and use a scroll.—*Dart v. Hughes*, 49 Colo. 468, 109 Pac. 952. And their written contract is valid without any seal if the contract has been regularly executed by proper officers or agents empowered to make it, and it can be so proven.

But in legitimate contracts, lawyer-like in form, the seal will always be impressed as the production of the paper so impressed is *prima facie* proof of authority of the company to make the contract and of the fact that it has made the contract.

The custodian of the seal is the secretary of the company, and he is the proper person to attest the execution

of every corporate contract or conveyance.

The seal attached to any paper purporting to be the deed of the corporation is *prima facie* proof that it is the deed of the company and that its delivery was authorized.—Union Co. v. Bank, 2 Colo. 226.

And the absence of a vote of the board authorizing the deed is not sufficient to overcome the presumption of authority.—*Id.*

A mortgage signed by the secretary, and not by the president or other head officer, with the corporate seal attached, is *prima facie* the deed of the company, the secretary being the legal custodian of the seal.—Bliss v. Harris, 38 Colo. 72, 87 Pac. 1076.

Replevin will lie by the company against its secretary to recover possession of its records and corporate seal.—Stovell v. Alert M. Co., 38 Colo. 80, 87 Pac. 1071.

A deed signed by the individual names of the corporate officers and without the common seal was held rightly excluded in Lyons Co. v. Peo., 29 Colo. 434, 68 Pac. 275.

4. TO HOLD PROPERTY.

There are no limitations upon the corporate power to hold or acquire property, provided it be confined to property upon which they may legitimately exercise their franchises. And if they take title to property which the law does not contemplate to be within their corporate scope, the deed nevertheless vests the title in the corporation, and it can only be taken from them by proper proceedings instituted by or on behalf of the State.

And their deed conveying property so wrongfully held to a *bona fide* purchaser before any proceedings to oust the corporation's claim of title would pass the title to the buyer.

A corporation's right to hold real estate cannot be attacked in a collateral proceeding.—Cowell v. Colo. Spgs. Co., 100 U. S. 55, Affirming 3 Colo. 82.

A mining corporation may locate in its own name a lode, or placer claim.—*McKinley v. Wheeler*, 130 U. S. 630. *Thomas v. Chisholm*, 13 Colo. 105, 21 Pac. 1019. And there is no doubt that it can become an appropriator of water rights.

5. POWER TO SELL PROPERTY.

The statute, Sec. 984 M. A. S., provides that, as to the real and personal property of a corporation, it “may, from time to time, sell and dispose of the same or any part thereof when not required for the use of the corporation.”

Any corporation may by vote of its board of directors, in legitimate trades or deals, order the sale of a particular piece of its property, the same as an individual.

But where it attempts to sell all its property, so that it would cease to have any property upon which to exercise its franchises, such transfer to be unimpeachable must be authorized by stockholders’ meeting.

In general terms it may be said that where a company is conducting a going, profitable business, a minority or even a single stockholder could enjoin an attempted sale of all the corporate assets. But where a corporation is becoming insolvent or conducting an unprofitable enterprise, the consent of a majority of the stock is sufficient to justify such sale to put an end to the loss.

In the case of *Mosher v. Sinnott*, 20 Colo. App. 454, 79 Pac. 742, a five-year lease by the board without action by the stockholders was held good under the general powers of the board. In a casual reading of the case it would seem that the court gave force to a provision in the company’s articles that the board might lease. But a close examination shows such express power was to acquire property by lease, not to grant property by lease. However, there can be no doubt of the power of the board to lease all of the corporation’s property for a limited term on fair conditions.

We do not think that the express reference to any power which would exist without such reference gives any greater right to exercise such power than if the articles were silent on the point. And it is clear that a long lease of all the corporate assets would stifle corporate life quite as effectually as a deed, and its validity would be determined on the same principles.

For the statutory power of mining and manufacturing companies to let five-year leases under Sec. 997 M. A. S.

Where a mining company has become dormant, it cannot be compelled to borrow money and make search for new ore bodies and the status exists which gives it the right to sell without unanimous consent of its stockholders.—*Geddes v. Anaconda Copper Co.*, 222 Fed. 130. The sale was not for cash, but for the stock of another company. The case also involved the question of directors interested in both companies. The Court fairly considered the situation and ordered a new public sale—the old sale to stand unless a better bid was obtained.

Where a corporation disposes of its entire assets and practically goes out of business leaving unpaid obligations, the transaction will be closely scrutinized, but when the consideration is adequate and no fraud appears, the purchasing company does not become bound for the unsecured debts of the vendor corporation.—*D. & S. F. Ry. v. Hangan*, 43 Colo. 123, 95 Pac. 343.

6. POWER TO BORROW AND MORTGAGE.

The power to secure a loan by a mining or manufacturing company can only be lawfully exercised by directors after authority given by a majority of the stockholders.—Sec. 997 M. A. S.

Such limitation does not apply to any other class of corporations.

When money is intended to be borrowed it should be shown on the minutes of the directors' meeting that the

loan was authorized, though we do not say that it could not otherwise be proved.

No officer of the company has the right to borrow money for the use of his company, but if nevertheless he does so and the money is expended for the benefit of the company, with the knowledge of the directors, the corporation is estopped to deny the debt.

7. INCIDENTAL POWERS.

A corporation has as matter of course the right to exercise all functions incidental to its business and franchise, and except where statutory limitations impose themselves has the same rights as an individual in relation to its ownerships.—*Colo. Spgs. Co. v. Am. Pub. Co.*, 97 Fed. 844.

An insolvent corporation has the same power to give preference to certain creditors that a natural person has.—*Beaman v. Stewart*, 19 Colo. App., 226, 74 Pac. 344; *Curtis v. Smelter Bank*, 43 Colo. 391, 96 Pac. 172.

A real estate company has the right to buy and to give its note to pay for an automobile.—*Western Inv. Co. v. Bank*, 23 Colo. App. 143, 128 Pac. 476.

8. POWERS ESSENTIAL TO CARRY OUT THE CORPORATE PURPOSES.

This includes the power to make by-laws, to issue stock, to make contracts within the scope of its name and objects, to appoint agents, and in general to do all things incident to the business which it was created to carry on.

NON-USER OF POWERS.

Non-user of corporate franchise is ground for its dissolution in quo warranto.—*State v. Pipher*, 28 Kan. 90.

A corporation exercising some of its powers cannot plead that it has lost others by failure to use them for a number of years.—*Colo. Springs Co. v. Am. Pub. Co.*, 97 Fed. 843.

CHAPTER III.

BUSINESS CORPORATIONS.

Sec. 975 M. A. S. Name.

That corporations may be formed under the provisions of this act, for any lawful purpose, including the ownership of stocks and bonds and securities of other corporations, but the corporate name of every corporation hereafter organized (except banks and corporations not for pecuniary profit) shall contain the word Corporation, Association, Company, Society, Incorporated, Syndicate, or one of the abbreviations "Co." or "Inc." shall be such as to distinguish it from any other corporation engaged in the same business or, promoting or carrying on the same objects or purposes.—L. 1919, p. 347, § 1, amending R. S. 1908, § 846.

Sec. 980 M. A. S. Certificate of Incorporation—Contents.

At any time hereafter any three or more persons who may or may not be residents of Colorado (except as hereinafter provided) who may desire to form a company for the purpose of carrying on any lawful business, may make, sign and acknowledge before some officer competent to take the acknowledgment of deeds, a certificate or certificates in writing, in which shall be stated:

1. The corporate name of said company.
2. The objects for which the company shall be created.
3. The term of its existence, not to exceed twenty years, except as hereinafter provided, save and except to make perpetual, corporations insuring lives of individuals which have been heretofore or may hereafter organize under the laws of Colorado.
4. The amount of the total authorized capital stock of said company, and if there be more than one class of stock, the amount of each class.

5. The number of shares of which the said stock shall consist, and the par value of each share; Provided that in case more than one class of stock is created, all of the shares of each class shall be of the same par value, but shares (shares) of different classes may have different par value.

6. In the case of a company without nominal or par value to its stock, or any class thereof, the certificate with respect to such stock, in lieu of the statements called for above in subdivisions 4 and 5, shall state the total number of such shares authorized, and that they are without normal or par value.

7. If there be more than one class of stock, a description of the different classes, with the designations, preferences, redemption or conversion features, voting powers or restrictions or qualifications thereof, and the other terms on which the respective classes of stock are created.

8. The number of directors or trustees of said company, and the names of those who shall manage the affairs of said company for the first year of its existence.

9. The name of the town or place, and the county, in which the principal office of the company shall be kept, and the name of the county or counties in which the principal business shall be carried on.

10. In case the company shall be created for the purpose of carrying on part or all of its business beyond the limits of this state, such certificate shall state that fact, and shall also state the name of the agent in charge of the principal office of said company to be kept within this state, with the street or office address of such office and agent, and in event of a change of such office or agent as named in the certificate of incorporation, after the filing thereof, such change may be effected by filing in each office where the certificate of incorporation is filed, a certificate signed by the president and secretary of the corporation, containing the new address of such office or the name and address of the new agent. Any corporation formed hereunder for the purpose of carrying on part or all its business beyond the limits of this state need not have a resident director or directors or officers, but shall maintain an office within this state in charge of an agent upon whom service of process may be made and at this office shall be kept the original or duplicate stock ledger open to the inspection of stockholders, but only as required by the statute relating thereto. Such corporation may have such officers and offices without the State of Colorado as are provided for in the charter, by-laws or by resolution of the Board of Directors.

11. The certificate may also contain any provision which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the company, and any provisions creating, defining, limiting or regulating the powers of the company, the directors and the stockholders, or any class of the stockholders; provided, such provisions are not contrary to the laws of this state.

The incorporators shall make as many certificates as may be necessary, so as to file one in the office of the recorder of deeds in each of the counties in which the principal business of the company is to be carried on within this state, and one in the office of the Secretary of State.—L. '21, p. 193, § 1, amending L. '19, p. 348, § 2, which amended R. S. '08, § 847.

Essential Requisites of the Articles.

The above section 980 M. A. S. enumerates nine specific statements to be expressed in the articles, and the omission of any one or more of them would doubtless be ground to set aside the articles upon direct attack. A substantial omission might even prevent admission of the articles in evidence as proof of corporate life. But in general any fair attempt at compliance with the statutory provisions will suffice where the regularity of the corporate organization is not specifically at issue.

Under Sec. 997 M. A. S. it is further required that the articles must state whether or not cumulative voting is to be allowed at stockholders' meetings.

These statutory requirements will be considered in the order above tabulated.

1. NAME.

The name of all corporations, except banks and corporations not for profit must contain the word Corporation, Association, Company, Society, Incorporated, Syndicate, or the abbreviation "Co." or "Inc."

Under the old law, where every corporation name had to begin with the article "The" and indicate the business to be carried on, it was held in *Austin v. King*, 25 Colo.

App. 363, 138 Pac. 57, that the absence of the word "The" in the corporate name implied that it was a foreign corporation.

The adoption of a name already in use by an existing corporation is forbidden. Sec. 982 M. A. S. And see Sec. 1017 M. A. S. To obviate rejection of papers on this account, inquiry should be made at the Secretary of State's office.

A corporate name once adopted becomes the company's property and will be protected like a trademark. But the adoption of a somewhat similar name by a new company will not be enjoined without proof of injury likely to result to the plaintiff.—*Drummond Tobacco Co. v. Randle*, 114 Ill. 412, 2 N. E. 412.

A transposition in the adjectives constituting a corporate name is not a material variance where it is entirely evident what company was intended to be described.—*Colo. S. Co. v. Ponick*, 16 Colo. App. 478, 66 Pac. 458.

An individual has no right to use a name presumably that of a corporation in signing his personal contracts.—*Irving v. Highlands*, 11 Colo. App. 364, 53 Pac. 234.

Where a partnership becomes incorporate under the same name which had been used by the firm, its members continue liable as partners to parties who have no notice of the change.—*Overlock v. Hazzard*, 12 Ariz. 142, 100 Pac. 447.

Where a corporation is sued by a wrong name and fails to plead the misnomer the judgment rendered is good against it.—*Burlington R. R. v. Burch*, 17 Colo. App. 491, 69 Pac. 6.

A defect in the name cannot be availed of by collateral attack in a case where the petitioner is seeking to condemn a right of way.—*Crystal Park Co. v. Morton*, 27 Colo. App. 74, 146 Pac. 566.

The determination, by the Secretary of State, that a foreign corporation may use a certain name is not binding

against rights of another corporation of the same name. A corporation cannot select the name of a competitor and pirate its business and only the State can plead the failure of such injured company to comply with its license laws. —General Film Co. v. General Film Co., 237 Fed. 64.

2. OBJECTS.

This article varies in every instance according to the purpose for which the company is organized. Some attorneys enlarge it interminably, repeating matters which, being corporate rights by statute, do not need to be expressed. It is only required to state the objects in general terms, not in details.

The form of this article for the various companies will be found under their appropriate heads.

3. THE AMOUNT OF CAPITAL STOCK.

This article is always short and formal. It gives merely the number of shares and the value of each share.

Sec. 993a M. A. S., provides that the value of each share shall not exceed \$100. In title, guaranty and trust companies the shares must be \$100.—Sec. 1082 M. A. S. In joint stock companies, \$10 to \$100.—Sec. 1159 M. A. S.

The Act of 1921 regarding the par value and providing for stock of no par value reads as follows:

Sec. 993a M. A. S. Par Value of Shares.

The par value of the shares of each class of capital stock of any corporation hereafter organized under the laws of the State of Colorado shall be in such sum, not exceeding one hundred dollars per share, as is provided for in the certificate of incorporation filed at the time such corporation is formed, or in any amendment thereafter duly adopted, certificates whereof shall be filed as provided by laws; provided, that any corporation may, if so provided in its certificate of incorporation or in an amendment thereof, issue shares of stock (other than stock preferred as to dividends or preferred as to its distributive share of the assets of the company or subject to redemption at a fixed price) without any nominal or par value. Every share of such stock without nominal or par value shall be equal to every other share of such stock, except that the certificate of incorporation or an

amendment thereof may provide that such stock shall be divided into different classes with such designations and voting powers or restrictions or qualifications thereof as shall be stated therein, but all such stock shall be subordinate to the preference given to the preferred stock, if any. Such stock may be issued by the corporation from time to time for such consideration, in labor done, services performed or money or property actually received, as may be determined from time to time by the Board of Directors, unless otherwise provided in the certificate of incorporation or an amendment thereof; and any and all such shares so issued shall be deemed full paid stock and not liable to any further call or assessment thereon, and the holder of such shares shall not be liable for any further payments in respect thereto. In any case in which the law requires that the par value of the shares of stock of a corporation be stated in any certificate or paper, it may be stated in respect of such shares having no par value that such shares are without par value; and wherever the amount of stock, authorized or issued, is required to be stated, the number of shares authorized or issued shall be stated, and it shall also be stated with respect to shares having no par value that such shares are without par value. For the purpose of the fees prescribed to be paid on the filing of any certificate or other paper relating to corporations, and of license prescribed to be paid by corporations to this state, but for no other purpose, such shares having no par value shall be taken to be of the par value of one dollar each.—L. '21, p. 196, § 2, amending L. '19, p. 350, § 4, which amended L. '15, p. 172, § 1.

The intent of this amendment is to allow shares of less par value than one dollar and of no par value shares. It would in practice never be applied to title guarantee and trust companies and probably does not apply to joint stock companies.

4. THE TERM OF EXISTENCE.

The term of existence of corporations generally is limited to twenty years. The exceptions are life insurance companies which may be perpetual; railroad companies, limited to fifty years, and gas companies to thirty years.

Calling for fifty years' corporate life, the statutory limitation being twenty years, held not to vitiate the articles even in a *quo warranto* proceeding.—People v. Cheeseman, 7 Colo. 376, 3 Pac. 716.

5. THE NUMBER OF SHARES.

This requirement in papers properly drawn is usually made a part of the article which gives the amount of capital stock.

6. THE NUMBER OF DIRECTORS OF TRUSTEES.

7. THE NAMES OF THOSE WHO SHALL MANAGE THE AFFAIRS OF THE COMPANY FOR THE FIRST YEAR OF ITS EXISTENCE.

The number of directors or trustees is fixed by Sec. 997, M. A. S., at not less than three.

Corporate authority is always vested in a board of directors or board of trustees, and in filling out this article one or the other word will be selected. "Directors" is commonly chosen, and the term is preferable to "Trustees," except in the case of churches and societies.

It is very usual and proper, where the number of incorporators does not exceed the number of intended directors, to repeat the names of the incorporators as the members of the board. Or to say that the incorporators and one, two or more other persons named shall constitute the board. But the persons named as directors need not include any of the incorporators.

The fact that the members of the board for the first year are named in the articles does not prevent their resignation within the year and the filling of the vacancies as the statute or the by-laws may provide.

8. PRINCIPAL OFFICE.

9. PRINCIPAL PLACE OF BUSINESS.

The requirements of these two paragraphs are usually covered by one article. There must be stated "the name of the town or place and the county in which the principal office of the company shall be kept," and "the name of the

county or counties in which the principal business shall be carried on."

The office need not be kept in the same county where business is intended to be carried on.

The above items 1 to 9 cover all the statutory requisites of section 980 M. A. S., in the articles of a business corporation.

The legal residence of a corporation is that county designated in its articles as that in which its principal office shall be kept.—*Woods M. Co. v. Royston*, 46 Colo. 191, 103 Pac. 291.

A corporation created by Act of Congress to carry on business in several States is not a citizen of any State.—*Bankers Trust Co. v. Texas Ry.*, 241 U. S. 296, 36 S. C. R. 569.

10. BUSINESS OUTSIDE THE STATE.

Where part of the business is intended to be carried on outside there must be an additional article to "state that fact," giving the city, county and state where such business is to be carried on.

Where the principal place of business of a domestic corporation is within but its chief office is out of the State it is not liable to attachment under the third clause of Sec. 98 of the Code.—*Rocky Mountain Co. v. Bank*, 29 Colo. 129, 67 Pac. 153.

11. BY-LAWS.

Section 1001 M. A. S., allows a further article to provide for the making of the by-laws by the board of directors, in the absence of which article the by-laws are to be adopted by stockholders' meeting.

12. CUMULATIVE VOTING.

By Act of 1921, Sec. 997 M. A. S., every corporation is required to state in its articles "Whether or not Cumulative voting shall be allowed." The statute reads:

"In all corporations hereinafter formed under the laws of the state the articles of incorporation shall state whether or not cumulative voting shall be allowed. Existing corporations whose articles do not so state, shall within one year from the date of approval of this Act, amend their articles of incorporation so as to show whether or not cumulative voting is allowed and on failure to do so shall be deemed to have adopted the cumulative system of voting for directors, and these provisions shall apply to all corporations organized for profit."—L. '21, p. 201, § 4.

Articles Not Called For by the Statute.

It has frequently been attempted to insert additional articles not provided for in the Act, such as a proposed limitation on the power of the company to contract indebtedness, or to eliminate liability of stockholders, or to restrain the powers of the directory, but all such attempts are useless and have been uniformly held void.—Cook on Corporations, Sec. 4.

They cannot thus restrict the obligations they are about to enter into to the community among which they are about to exercise their corporate life. But they may, by special calls in the Articles anticipate their by-laws.

Under the article designating the number of shares where it is intended to issue both preferred and common stock, it is proper to anticipate such division of stock. The authority for such issue must be apparent somewhere and its insertion in the charter is advisable.

Where they incorporate a prohibited purpose among the objects, this does not invalidate the articles as to the other valid purposes. But a departure from or enlargement of the statutory articles in most instances is unadvisable and tends to confusion.

Such additional article was held of no more effect than a by-law in *Shaw v. Bankers Insurance Co.*, 61 Ind. App. 346, 112 N. E. 16. If treated as a by-law is it subject to amendment as other by-laws? From any point of view it is obvious that the insertion of such uncalled for article suggests questions of amendment, estoppel and *ultra vires*

and can do much harm with no compensating advantage.

Not-for-profit companies (Class B), however, may enlarge their articles radically.—Sec. 1131 M. A. S.

Execution and Acknowledgment.

The certificate, in the language of the statute, the incorporators “make, sign and acknowledge.” This requires the signature of all the persons named as incorporators.

Before What Officer.

The acknowledgment must be taken before “some officer competent to take the acknowledgment of deeds,” which includes a notary public, judge and clerk of a court of record or the county recorder or his deputy if taken in Colorado. If taken in any outside State or Territory it may be before either notary, judge or clerk of court of record or a commissioner of deeds for Colorado. If in a foreign country, before a court of record having a seal, the mayor or other chief officer of a city or town having a seal, or before any consul of the United States under his consulate seal.—Sec. 825 M. A. S.

Whether a justice of the peace can take the acknowledgment is not clear under the section cited. They are authorized to take acknowledgments of any “instrument required to be acknowledged or proved” by Code Sec. 444, but whether that would include such an instrument as a corporate charter in an Act limited to judicial procedure again suggests that an officer of whose authority there is no doubt, should be selected. There is no statute authorizing the use of a name by power of attorney to act as incorporator, but we know of no principle of law which would be violated by such action.

Number of Certificates—Record.

The articles must be executed in duplicate, to allow one to be filed with the Secretary of State and one in the office

of the clerk and recorder of the county where the principal business is carried on. If carried on in more than one county there must be an additional original to file in every such country.

If the principal office is fixed in another county that fact seems to require a filing in that county.

It has been ruled that neglect to file with the recorder is not fatal, where the articles have been in fact filed in the office of the Secretary of State only.—Humphreys v. Mooney, 5 Colo. 282.

The duplicate original filed with the Secretary of State is not only filed but recorded, while the duplicate left with the recorder is filed only and not copied on the record books, unless the company pay an additional fee for a local record, which is wholly unnecessary.

Sec. 1038 M. A. S. Fees of Domestic Corporations.

Every corporation, joint stock company or association, incorporated by or under any general or special law of this state, having a capital stock divided into shares, shall pay to the Secretary of State, for the use of the state, a fee of twenty dollars, in case the capital stock which said corporation, joint stock company or association is authorized to have, does not exceed fifty thousand dollars; but, in case the capital stock thereof is in excess of fifty thousand dollars, the Secretary of State shall collect the further sum of twenty cents on each and every thousand of such excess, and a like fee of twenty cents on each thousand of the amount of each subsequent increase of stock.

Disabilities Until Fees Paid.

The said fee shall be due and payable upon the filing of the certificate of incorporation, articles of association or charter of said corporation, joint stock company or association in the office of the Secretary of State; and no such corporation, joint stock company or association shall have or exercise any corporate powers or be permitted to do any business in this state, or to acquire or hold any real or personal property, or any franchises, rights or privileges of any kind whatsoever or prosecute or defend any suit in this state until the said fee shall have been paid; and the Secretary of State shall not file any certificate of incorporation, articles of association, charter or certificate

of the increase of capital stock, or certify or give any such certificate to any such corporation, joint stock company or association until said fee shall have been paid to him.

Not For Profit Companies.

But this act shall not apply to corporations not for pecuniary profit, or corporations organized for religious, educational or benevolent purposes.—R. S. '08, § 901.

The above section is substantially the same as Section 1, Acts of 1887, p. 406, except as to the amount of fees, which it fixes heavier than the 1887 Act. The prior act is construed in *Jones v. Aspen Co.*, 21 Colo. 263, 40 Pac. 457, holding that a pretended company which had not filed its articles with the Secretary of State was neither a *de jure* nor a *de facto* corporation, and that such fatal non-compliance laid the Articles open to collateral attack.

Cost of Organization.

There must be paid to the Secretary of State, on filing the articles in his office, \$20 for the first \$50,000 of capital stock and twenty cents for each additional \$1,000 of stock.—Sec. 1038 M. A. S.

This makes the filing fee for a company capitalized at \$100,000 amount to \$30. On a capital of \$250,000, \$60. On a capital of \$500,000, \$110. On a capital of \$1,000,000, \$210.

Section 2876 M. A. S., prescribing a fee of so much per folio for filing articles, is treated in the Secretary's office as repealed by Section 1038 M. A. S.

For the certificate of authority required by Sec. 1050 M. A. S., \$5.

For certified copy of the articles, \$1, plus fifteen cents per folio.

For filing impression of corporate seal, \$2.50.

The Secretary of State is not allowed to issue any certificate of any kind as long as any legal fees remain unpaid.—Sec. 1048 M. A. S.

One dollar will cover charges of the county recorder in a county of any class for filing and indexing the articles in his office.—Sec. 2896 M. A. S.

For special fees payable by insurance company, see Acts of 1913, p. 331, §14, §3546 M. A. S., p. 364, §65, §3597 M. A. S. County Protective Associations, Id., p. 368, §74, §3606 M. A. S. By foreign corporations, §1044 M. A. S.

Expenses Prior to Organization.

The attorney's bill for drawing the corporate articles is a debt of the corporation.—*Freeman Co. v. Osborn*, 14 Colo. App. 488, 60 Pac. 730. But undoubtedly the incorporators are also personally liable, as they personally contract the bill before the corporation has come into existence.

It often happens that a bonus on bonded property is promised by the incorporators before the articles are filed or debts are incurred in anticipation of organization. Such bills are usually and legitimately assumed and paid by the company, but if they have to be sued for they are generally held to be the debts of the organizers individually.—*Hersey v. Tully*, 8 Colo. App. 110, 44 Pac. 854.

A corporation cannot be bound by a contract between promoters prior to its organization.—*Miser M. Co. v. Moody*, 37 Colo. 310, 86 Pac. 335.

But it may ratify or adopt such acts and so become liable.—*Arapahoe Inv. Co. v. Platt*, 5 Colo. App. 515, 39 Pac. 584; *Colo. L. Co. v. Adams*, 5 Colo. App. 190, 37 Pac. 39; *Expansion M. Co. v. Campbell*, 62 Colo. 410, 163 Pac. 968.

Expenditures pending its organization by one who became its president were allowed as credits in *Grand R. B. Co. v. Rollins*, 13 Colo. 4, 21 Pac. 897.

All who participate in the promotion of a corporation which never becomes complete, are liable for the debts of the organizers.—*Hall Co. v. Crist*, 98 Kan. 723, 160 Pac. 198.

Certificate of Authority.

When the articles are filed, before any business company is allowed "to exercise any corporate powers" or acquire any property or do any business it must receive from the Secretary of State a paper certifying that it has paid all fees due the State. This document, known as the "Certificate of Authority," the Secretary issues as a matter of course upon payment of his fee of \$5 for the same, which fee is paid at the time of filing the articles. The section requiring it reads:

Sec. 1050 M. A. S. Certificate of Authority—Fee—Shall Not Transact Business Without.

No corporation, joint stock company or association, incorporated by or under any general or special law of this state, or by or under any general or special law of any foreign state or kingdom or of any state or territory of the United States, beyond the limits of this state, shall exercise any corporate powers or acquire or hold any real or personal property, or any franchises, rights or privileges, or do any business or prosecute or defend in any suit, in this state until it shall have received from the Secretary of this state a certificate setting forth that full payment has been made by such corporation, joint stock company or association, of all fees and taxes prescribed by law to be paid to the Secretary of State, and every such corporation, joint stock company or association shall pay to the Secretary of State for each such certificate, a fee of five dollars.

Nothing in this section shall apply to corporations not for pecuniary profit, or corporations organized for religious, educational or benevolent purposes.—R. S. '08, § 910.

CERTIFICATE OF AUTHORITY.**STATE OF COLORADO.****OFFICE OF THE SECRETARY OF STATE.**

I, *James R. Noland*, Secretary of State, of the State of Colorado, do hereby certify that on the *first* day of *August*, A. D. 1917, at the hour of 2 o'clock P. M., there was filed in my office a certificate of incorporation of *The Chalas Steel Alloys Company*.

Now, Therefore, Pursuant to the provisions of Section 1050, of Mills Annotated Statutes, of the State of Colorado, I do further certify that the said *The Chalas Steel Alloys Company* has made full payment of all fees and taxes authorized by law to be paid to the Secretary of State and due at the time of the issuance of this certificate.

(Seal.) In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State of Colorado, at the City of Denver, this *first* day of August, A. D. 1917.

JAMES R. NOLAND,
Secretary of State.

FLOYD FAIRHURST,
Deputy.

The issue of this document or license completes the organization so far as the contract with the State is concerned. It remains then for the persons named in the articles as directors to hold their first or organization meeting, at which the president, secretary and other officers are elected. A seal is adopted, the by-laws are enacted, provision is made for the sale and issue of stock, and such other preliminaries are noted as far as the design of the adventurers has progressed.

Where a water works company filed its articles as required by law, but had issued no stock and elected no officers, its corporate existence was not complete, and a contract between the water works and the city it was intended to supply was held void. A corporation cannot exist without stockholders or members.—Aspen W. Co. v. City of Aspen, 5 Colo. App. 12, 37 Pac. 728.

Necessary Books and Papers.

By Sec. 1003 M. A. S., corporations are required to keep "correct books of account," which is satisfied by the ordinary day book and ledger, and by Sec. 1004 M. A. S., a stock ledger. These are the only books mentioned in the statute, but as a matter of course there must be a stock book and book for record of meetings of directors and stockholders.

Articles of Incorporation.**MERCANTILE COMPANY.**

Whereas, Henry P. Lowe, Thomas L. Wood and Francis C. Webb, all of the City and County of Denver, State of Colorado, have associated themselves together for purposes of incorporation under the general incorporation acts of the State of Colorado, they do therefore make, sign and acknowledge these *duplicate* certificates in writing, which, when filed, shall constitute the Articles of Incorporation of the within named company.

ARTICLE 1. *Name*.—The name of said company shall be "THE BOOTH MERCANTILE COMPANY."

ARTICLE 2. *Object*.—The objects for which said company is created are to buy, sell, trade and deal in goods, wares and merchandise, wholesale and retail, and to do all things incident to the carrying on of a mercantile business, including warehouses for the storage of such goods and stores for the vending of the same.

ARTICLE 3. *Duration*.—The term of existence of said company shall be twenty years.

ARTICLE 4. *Shares*.—The capital stock of said company shall be fifty thousand dollars, divided into fifty thousand shares of one dollar each.

ARTICLE 5. *Directors*.—The number of directors of said company shall be five, and the names of those who shall manage the affairs of the company for the first year of its existence are Henry P. Lowe, Thomas L. Wood, Francis C. Webb, David P. Howard and W. W. Booth.

ARTICLE 6. *Office—Place of Business*.—The principal office of said company shall be kept at the Town of Kremmling, in the County of Grand, in said State, and the principal business of said company shall be carried on in the County of Grand in said State.

ARTICLE 7. *By-Laws*.—The board of directors shall have power to make such prudential by-laws as they may deem proper for the management of the affairs of the company, not inconsistent with the laws of this State, for the purpose of carrying on all kinds of business within the objects and purposes of such company.

ARTICLE 8. *Cumulative voting* shall not be allowed.

In Witness Whereof, The said incorporators have hereunto set their hands and seals this third day of January, A. D. 1917.

HENRY P. LOWE, (Seal.)

THOMAS L. WOOD, (Seal.)

FRANCIS C. WEBB, (Seal.)

STATE OF COLORADO. CITY AND COUNTY OF DENVER. SS.

I, Duncan W. Miller, a Notary Public in and for said County, do hereby certify that Henry P. Lowe, Thomas L. Wood and Francis C. Webb, who are personally known to me to be the same persons described in, and who executed the within Articles of Incorporation, personally appeared before me this day and acknowledged that they signed, sealed and delivered the same as their free and voluntary act and deed.

Witness my hand and Notarial Seal this third day of January, A. D. 1917.

My commission expires
(Seal.)

DUNCAN W. MILLER,
Notary Public.

Articles of Manufacturing Company.

ARTICLE 1. The name of said company shall be *The Vulcan Iron Company*.

ARTICLE 2. The objects for which said company is created are to reduce the ores of iron and their alloys into pig iron and into steel and to manufacture from such iron or steel, rails, bars, nuts, castings, bolts, plates and all sorts of iron or steel products used in the construction or repair of railroads and buildings, and other industrial purposes. To construct and operate furnaces, blasts, rolling mills and foundries in connection with said business. To sell and exchange the produce of such mills and works. To construct and operate tramways to connect with any neighboring railroads.

To purchase, exchange and vend the supplies and materials used in any branch of said business and to keep stores, warehouses and boarding houses in the operation of said business, and to do all things incident to or usual in the business of the manufacture of iron and steel.

Preamble, Articles 3-8 and acknowledgment, same as last form above.

What constitutes a manufacturing company is to a slight extent considered in *Dillon v. Myers*, 58 Colo. 492, 146 Pac. 268, and in *Carlsbad Co. v. New*, 33 Colo. 389, 81 Pac. 34.

Articles of Cement Company.

ARTICLE 1. The name of said company shall be *The Adamant Cement Company*.

ARTICLE 2. The objects for which said company is created are to manufacture cement for buildings, pavements, foundations, fireproofing and for all other purposes for which cement is or can be used. And to buy or mine or otherwise procure all materials for the manufacture of cement. And to build or purchase or rent land, works and plant for such manufacture and for the procuring of the materials for such manufacture. And to sell and exchange the produce of such plant or works and to construct and operate tramways in connection with such works and to contract for the placing and use of the cement as builders and contractors.

To purchase, exchange, and vend the supplies and materials used in any branch of said business and to keep stores, warehouses and boarding houses in the operation of said business, and to do all things incident to or usual in the business of the manufacture of cement.

Preamble, Articles 3-8 and acknowledgment, same as on page 39.

Articles of Automobile Company.

ARTICLE 1. The name of this Company shall be *The Speeder Automobile Company*.

ARTICLE 2. The objects for which said company is formed are to manufacture, repair, buy and sell automobiles and motor vehicles of every description. And to deal generally with automobile and motor vehicles in all matters pertaining to their construction, keep, repair and storage. And to deal in oil, gasoline, electric power, tools, furnishings, fixtures and accessories to the use of any kind of self-propelled vehicles.

And to buy or lease or otherwise acquire land and buildings for use in carrying on such business and to sell and dispose of from time to time interests in land or leases however acquired. And to buy, own and dispose of stock in other automobile companies, whether foreign or domestic corporations.

Preamble, Articles 3-8 and acknowledgment, same as on page 39.

Articles of Hotel Company.

ARTICLE 1. The name of the company shall be *The Waldorf Hotel Company*.

ARTICLE 2. The objects for which said company is created are to run and operate a hotel in the City of Pueblo and to acquire and hold, purchase or lease buildings and land upon which to build suitable structures or to use structures already built.

And to hold and operate or otherwise deal and contract with garages, livery stables, laundries and other accessories to the business of entertaining travelers, lodgers and boarders. And to operate such bars as may be allowed by law. And to do all things incident to the general entertainment of the transient and traveling public, and from time to time to sell, transfer and sublet any and all such land and buildings or leasehold interests therein.

Preamble, Articles 3-8 and acknowledgment, same as on page 39.

CHAPTER IV.

MINING, MILLING AND TUNNEL COMPANIES.

Sec. 1109 M. A. S. General Powers of Mining, Milling and Tunnel Companies.

Any ore reducing, mining or tunneling company organized under the provisions of this act shall have the power to acquire, by purchase or otherwise, mining property, and work, mine, tunnel and develop the same, erect necessary buildings, mills, machinery and appliances, and purchase materials for the proper working thereof, and do any and all things necessary and requisite to carry into effect the objects for which they may be formed, as named in their certificate of organization.

Shares Must Read "Assessable" or "Non-Assessable."

The certificate of incorporation of any such company, in addition to the other matters required in this Act to be stated therein, shall contain a statement that the stock of such company is either assessable or non-assessable, and each certificate of stock issued by such company shall have plainly printed on the face thereof the word "Assessable" or "Non-assessable," as the case may be.—R. S. '08, § 975.

The above section requires the articles to state whether the stock is assessable or non-assessable, and the shares to be plainly printed on their face "assessable" or "non-assessable" according to the fact.

The restriction of the maximum number of directors to nine contained in section 1111 M. A. S. is superseded by section 997 M. A. S., of later date of passage, making no limit.

There is a special section [§1117 M. A. S.] allowing consolidation of this class of companies. Section 997 M. A. S. provides for notice of annual meetings and for cumulative voting, and practically supersedes all the terms of 1111 M. A. S., a prior statute on the same subject. There are further minute provisions for assessment of mining stock, which subject is elsewhere considered.

The mortgaging of the property of a "mining or manufacturing" company is forbidden unless by action of stockholders.—Page 176.

The annual reports required of them differ in some respects from those required of other corporations.—Sec. 1051 M. A. S.

They are, of course, subject to the Acts regulating mines, involving ventilation, inspection, safe-guarding, etc., but these apply to all mine owners, whether natural or artificial persons.

With the above noted exceptions, mining companies are organized and governed the same as other business corporations.

Sec. 1110 M. A. S. Purchase of Mines With Stock— Assessable and Non-Assessable Stock.

Any mining company, organized under the provisions of this Act, may, for the purpose of purchasing mining property, and providing a capital for carrying on the business of the company, issue full paid stock in payment of the same, which shall be non-assessable, until the balance or whole amount of the capital stock shall have been assessed to the par value thereof and fully paid, after which the stock shall all be equally and ratably liable to assessment for the operations of the company; *Provided, however,* Any company may issue all its stock assessable or non-assessable, but no company shall issue both assessable and non-assessable stock, except as provided in this section.—R. S. '08, § 976.

When the stock of any ordinary business company has become fully paid, either because issued for property or paid for in full to its par value, without the aid of some statute such as that above printed there can be no further involuntary assessment, and if the company has no other assets it can keep alive only by voluntary contributions or by securing a loan on its property. But by the terms of the above section, which applies to mining companies only, assessments may be levied over and above the par value of the stock.

The first clause of the section purports to allow the issuing of full-paid stock in exchange for property, which is no more than any company can do under the general terms of section 986 M. A. S. It then proceeds to say that stock so issued, although full-paid, should become assessable after all the balance of the stock shall have become paid by being assessed to its par value.

When all the stock has become paid, the section continues, both the purchase money stock and the other stock shall be liable to further assessments.

So far the section is plain—it provides for assessments in excess of the first value of the stock—but the clauses which follow introduce manifest confusion.

Both of the above printed sections were brought into the revision of 1877, known as the General Laws under a title which gives no aid to their construction.

The proviso of Section 1110 M. A. S. says that, “Any company may issue all its stock assessable or non-assessable.” One construction would be that it must issue all its stock of one class or all of the other class. If it is allowed to issue both classes it cannot mean anything else than that the stock issued to buy mines is of one class and the balance of the stock forms the other class.

In practice, however, we have never known such division to be made and the usage is almost invariable to make all the stock non-assessable.

The question then is: What does non-assessable mean?

As to the stock issued for mines, it is plain that it means paid-up stock.

As to the stock not so issued, such stock must be paid for in cash, either when issued or later. If not paid for at once on issue it seems to be purchased with the reserved right to call for the later installments, until which are paid, the stock is not paid for, and, while such installments are commonly called assessments, it does not seem that calling the stock non-assessable relieves it from the necessity of paying for it to its full face value, under the terms of Sec. 9 of Art. 15 of the Constitution.

This construction is on the assumption that the assessment referred to in this section means assessment after the stock has been fully paid in one way or the other.

It is, however, not the only possible construction, as it may be held that the company may sell its stock at whatever figure it may be able to get and is estopped by the use of the term "non-assessable" from requiring any further payments. But in such case such stock would probably be held liable to creditors for the unpaid balance.

The whole section is drawn as if intended to produce confusion and it would have been better to leave assessments on mining stock to the provisions applying to corporate stock generally.

The words "non-assessable" printed on stock are construed in *Porter v. Northern Ins. Co.*, 36 N. Dak. 199, 161 N. W. 1012; also the distinction between "calls" and assessments. The company were enjoined from collecting an attempted assessment on stock so printed.

The conveyance of mining property in exchange for stock is a sale for a valuable consideration.—*Homestead M. Co. v. Reynolds*, 30 Colo. 331, 70 Pac. 422.

To hold stock as unpaid because exchanged for mines at an over-valuation it is necessary to show that the property was fraudulently and knowingly over-valued.—*Speer v. Bordeleau*, 20 Colo. App. 413, 79 Pac. 332.

The sale of stock for services or property cannot be impeached for mere error of judgment of the officers of the company as to the value of the services or property.—*Arapahoe Co. v. Stevens*, 13 Colo. 534, 22 Pac. 823.

Tunnel Companies.

There is nothing required by statute as to the articles of a tunnel company other than is required of any other mining company, but in order to be able to exercise the right to condemn its right of way it should state that it is organized to transport ores as a common carrier, as per form below; and in order to claim the right to blind veins its location certificate must conform to the Act of Congress.

It is also required to record its tunnel location certificate.

Sec. 4874 M. A. S. Record of Tunnel Site.

If any person or persons shall locate a tunnel claim for the purpose of discovery, he shall record the same, specifying the place of commencement and termination thereof, with the names of the parties interested therein.—R. S. '08, § 4207.

This record of its tunnel site has in strictness nothing to do with its corporate articles, but it is obviously proper to refer to the particular tunnel intended to be driven, in stating the corporate objects.

Tunnel Company Articles.

ARTICLE 1. The name of said company shall be *The Admiral Cervera Tunnel Company*.

ARTICLE 2. The objects for which said company is formed are to drive the Admiral Cervera Tunnel, situate at the base of Wood Mountain, in Sugar Loaf Mining District, County of Boulder, State of Colorado, for purpose of discovery of mineral bearing lodes; and for the development of lodes already located across the line of said tunnel, title to which may be acquired by said company; and to work and mine any and all lodes to be either discovered, penetrated or reached by said tunnel; and to drain the same and to charge for such drainage as may be agreed

on or allowed by law, and for the purpose of *carrying and transmitting ore, rock, mineral, men and supplies for hire, from such lodes or mines as may be cut by or reached from said tunnel, and to do all things incident to the business of driving and operating a prospecting, drainage and revenue tunnel, as to all lodes to be cut by said tunnel, or which may be reached by drift or crosscut from or to said tunnel.*

ARTICLE 9. The stock of said company shall be non-assessable.

Preamble, other articles, attestation clause and acknowledgment as on page 39.

To enable it to claim the right to condemn it must contain the clause above italicized or equivalent terms, and must also record in the office of the county clerk "a map or survey of its proposed tunnel" and a statement, a form for which is below printed.

To acquire the right to blind lodes, it must also conform to the requirements of Sec. 2323 of the U. S. Rev. Stats. and the Land Office regulations concerning the same. —Mining Rights, 14th Ed. 287, 15th Ed. 311.

Tunnel Statement.

Know All Men By These Presents, That the Admiral Cervera Tunnel Company has located (or holds by purchase from the locators) the Admiral Cervera Tunnel, at the base of Wood Mountain, in Sugar Loaf Mining District, County of Boulder, State of Colorado.

The portal of said tunnel is placed at a point from which the northeast corner stake of the Clethmor lode, Survey Lot No. 777, bears north 5 degrees E. 126 feet, and the route or course of said tunnel is north 20 degrees E. into said mountain 3,000 feet, which will cross the Moose and Elk lodes, patented, and the Bear lode, a location; such route or course of tunnel and all known properties which it will intersect being correctly shown on the map hereto attached, which is filed in compliance with the terms of Sec. 2445, of the Revised Statutes of Colorado.

Witness the corporate name and seal of said company this first day of August, A. D. 1917.

THE ADMIRAL CERVERA TUNNEL COMPANY,

Attest:

By H. CLAY LAWRENCE, President.

OTTO SHATZ.

(Seal)

Secretary.

STATE OF COLORADO, COUNTY OF BOULDER, SS.

Before me, the subscriber, a Notary Public in and for said county, personally appeared H. Clay Lawrence, president of the within named, The Admiral Cervera Tunnel Company, who is personally known to me, and personally known to be such president, and the same person who, as such president, subscribed the corporate name and caused the corporate seal of said company to be affixed to the within statement or declaration of occupation, and acknowledged the same to be his free and voluntary act and deed as such president and the free and voluntary act and deed of the said corporation for the uses and purposes therein set forth.

Witness my hand and Notarial Seal this first day of August, A. D. 1917.

My commission expires

(Seal)

PRINCE A. HAWKINS,
Notary Public.

Articles of Placer Mining Company.

ARTICLE 1. The name of said company shall be *The John Fortune Placer Mining Company*.

ARTICLE 2. The objects for which said company is formed are to purchase, locate and otherwise acquire, hold and operate deposits of gold bearing gravel in the County of Park, State of Colorado, and to work and operate the same, and to acquire, hold and use ditches, water, water rights, pipes and hydraulic power in connection with the working of gold bearing gravel, and to do all things incident to the business of placer mining.

ARTICLE 9. The stock of said company shall be non-assessable.

Preamble, other articles and acknowledgment same as page 39.

Articles of Coal Mining Company.

ARTICLE 1. The name of said company shall be *The Pittsburg Coal Mining Company*.

ARTICLE 2. The objects for which said company is formed are to acquire, hold and operate beds of bituminous coal in the County of Routt, State of Colorado, and to sell the product of the same, and to convert the same into coke, and to build and operate the necessary breakers, and to build, equip and maintain any branch railroad necessary to market the product in any form, and to do all things necessary or incident to the business of coal mining.

ARTICLE 9. The stock of said company shall be non-assessable.

Preamble, other articles and acknowledgment same as page 39.

For articles of lode mining company see Mining Rights, 14th Ed. p. 365, 15th Ed. p. 396.

Articles of Oil Company.

ARTICLE 1. The name of said company shall be *The Terror Oil Company*.

ARTICLE 2. The objects for which said company is organized are to bore, drill, sink and search for oil and incidentally for natural gas. And to locate oil claims upon the Public Domain and patent the same. And to buy or lease oil bearing land and as well to acquire such land by discovery and location and howsoever acquired, to prospect the same for oil and to work the same and to sell, ship, pipe and refine the oil and other products of such wells.

And to buy and sell petroleum and the bi-products of oil wells, including natural gas and to manufacture and deal in all the products of petroleum.

And to do all things incident to the acquisition, ownership and disposal of oil wells and oil products.

ARTICLE 9. The stock of said company shall be non-assessable.

Preamble, other articles and acknowledgment same as on page 39.

Articles of Oil Shale Company.

ARTICLE 1. The name of said company shall be *The Mount Logan Oil Shale Company*.

ARTICLE 2. The purposes for which said company is created are to mine and extract oil bearing shale, to tram or otherwise transport the same to the plant or railroad and to reduce and treat the same for the extraction of petroleum, gasoline, tar, paint, dyes, chemicals and all other products contained in or reducible from such shale rock and to manufacture all such things and products and to market and sell the same. And in such operations to build, erect, purchase and operate mills, reduction works, chemical laboratories, furnaces, stills and plant of any and all kinds necessary or useful to extract and advance to commercial form all the values found in such shale. To sell

and exchange the products and by-products of such shale. To construct and operate tramways to connect with any neighboring railroads or other highways of transportation. And to keep stores, warehouses and boarding houses in the operation of said business and to do all things incident to or usual in the production, treatment and disposal of shale and the products of shale.

ARTICLE 9. The stock of said company shall be non-assessable.

Preamble, other articles and acknowledgment same as on page 39.

CHAPTER V.

DITCH COMPANIES.

Sec. 1092 M. A. S. Special Requirements in Their Articles.

When any three or more persons associate under the provisions of this chapter to form a corporation for the purpose of constructing a ditch, reservoir, pipe line, or any thereof for the purpose of conveying water from any natural or artificial stream, channel or source whatever, to any mines, mills or lands, or storing the same, they shall in their certificate, in addition to the matters required in section 2 [§ 980 M. A. S.] of this chapter, specify as follows, viz.: The stream, channel or source from which the water is to be taken, the point or place at or near which the water is to be taken out, the location as near as may be, of any reservoir intended to be constructed, the line as near as may be, of any ditch or pipe line intended to be constructed, and the use to which the water is intended to be applied.—R. S. '08, § 988.

Sec. 1093 M. A. S. Commencement and Completion of Work After Organization.

Any company formed under the provisions of this act for the purpose of constructing any ditch, flume, bridge, ferry or telegraph line, shall, within ninety days from the date of their certificate, commence work on such ditch, flume, bridge, ferry or telegraph line, as shall be named in the certificate, and shall prosecute the work with due diligence, until the same is completed, and the time of the completion of any such ditch, bridge,

ferry or telegraph line shall not be extended beyond a period of two years from the time work was commenced as aforesaid; and any company failing to commence work within ninety days from the date of the certificate, or failing to complete the same within two years from the time of commencement as aforesaid, shall forfeit all right to the water so claimed, and the same shall be subject to be claimed by any other company; the time for the completion of any flume constructed under the provisions of this Act shall not be extended beyond a period of four years;

Provided, This section shall not apply to any ditch or flume for mining or other purposes, constructed through and upon any grounds owned by the corporation;

And provided, further, That any company formed under the provisions of this Act to construct a ditch for domestic, agricultural, irrigating, milling and manufacturing purposes, or any or either thereof, shall have three years from the time of commencing work thereon within which to complete the same, but no longer.—R. S. '08, § 989.

Sec. 1094 M. A. S. Right-of-Way—Prior Rights Protected.

Any ditch, reservoir or pipe line company formed under the provisions of this chapter, shall have the right of way over the line named in the certificate, and shall also have the right to run water from the stream, channel or water source, whether natural or artificial, named in the certificate through its ditch or pipe line, and store the same in any reservoir of the company when not needed for immediate use;

Provided, That the line proposed shall not interfere with any other ditch, pipe line or reservoir, having prior rights, except the right to cross by pipe or flume; nor shall the water of any stream, channel or other water course, whether natural or artificial, be diverted from its original channel or source, to the detriment of any person or persons having priority of right thereto, but this shall not be construed to prevent the appropriation and use of any water not theretofore utilized and applied to beneficial uses.—R. S. '08, § 990.

For Sec. 1095 M. A. S., see page 226.

Sec. 1096 M. A. S. Shall Furnish Water to Whom—Rate.

Any company constructing a ditch under the provisions of this Act, shall furnish water to the class of persons using the

water in the way named in the certificate, in the way the water is designated to be used, whether miners, mill-men, farmers or for domestic use, whenever they shall have water in their ditch unsold, and shall at all times give the preference to use of the water in said ditch to the class named in the certificate; the rates at which water shall be furnished to be fixed by the county commissioners, as soon as such ditch shall be completed and prepared to furnish water.—R. S. '08, § 992.

[For power of county commissioners to fix water rate, see Secs. 3792-3800 M. A. S.]

Sec. 1097 M. A. S. Shall Keep Ditch in Repair.

Every ditch company organized under the provisions of this Act shall be required to keep their ditch in good condition so that the water shall not be allowed to escape from the same to the injury of any mining claim, road, ditch, or other property; and whenever it is necessary to convey any ditch over, across, or above any lode or mining claim, or to keep the water so conveyed therefrom, the company shall, if necessary to keep the water of said ditch out, or from any claim, flume the ditch so far as necessary to protect such claim or property from the water of said ditch.—R. S. '08, § 993.

A ditch company may be formed to carry water for domestic purposes, for mining, manufacturing, drainage, power or irrigation, or for all or any of such purposes.

It must comply with the formalities imposed upon business corporations and in addition its articles must comply with section 1092 M. A. S., above printed, by stating the source of water supply, the line of ditch and intended use—as per form of ditch articles, see page 54.

And must commence work within ninety days from date of articles and complete the work within two years from time of commencement; but the various classes of ditch companies mentioned in the last paragraph of section 1093 M. A. S. are allowed three years.

Ditch companies taking water from the same source may consolidate under the special provision of section 1098 M. A. S., and may extend their corporate life under the forms prescribed in section 1101 M. A. S.

The penalty for failure to begin work within ninety days, as expressed in the statute, is forfeiture of all right to the water claimed, and the same penalty may be probably inferred from the context for failure to finish within three years, but certainly not as to any water whose appropriation was complete within that period, although the entire line of ditch was not completed.

Co-owners in a ditch formed an irregular joint stock company, but recorded articles which required a two-thirds vote to amend its by-laws. Held, that the articles bound the co-owners as an agreement.—*Strang v. Osborne*, 42 Colo. 187, 94 Pac. 320.

The transfer of stock in a ditch company is a transfer of an interest in the ditch and its priorities where the company was organized by the ditch owners, and it issued stock to the owners in proportion to their original rights in the ditch.—*Cache La Poudre Co. v. Larimer Co.*, 25 Colo. 144, 53 Pac. 318.

Every ditch company is given the right of way over its proposed line [§1094 M. A. S.], and if not acquired by deed may condemn such right of way.—Const., Art. 16, Sec. 7; Art. 2, Sec. 14, Chap. 51 M. A. S.

They are given the right to store water in reservoirs when not in use.—Sec. 1094 M. A. S. Section 1095 M. A. S. makes special provisions for assessments against stockholders. And they are required to give preference to the class of water users for whose special benefit their corporate powers were granted.—Sec. 1096 M. A. S.

The case of *Stuart v. Jefferson County*, 25 Colo. App. 568, 139 Pac. 577, is one which holds that no change in ditch management is valid which benefits one stockholder at the expense of another and that the company has no right to change the mode of supply so as to diminish the quantity rightfully to be enjoyed by any stockholder.

It also considers the question of the rights of stockholders to surplus water.

When land and water are used together, a statement of the value of the land may often be honestly taken as including the value of shares in its ditch.—Wood v. Yant, 27 Colo. App. 189, 149 Pac. 854.

The county commissioners have the right to establish maximum rates of charge for use of water.—Const., Sec. 8, Art. 16.

Articles of Ditch Company.

ARTICLE 1. The name of said company shall be *The Ten Mile Ditch Company*.

ARTICLE 2. The objects for which said company is created are to own, construct and maintain a ditch for the purpose of conveying water from the waters of Ten Mile Creek to the Town of Dillon, and for storing such water in convenient dams and reservoirs, and to use and sell water for domestic, mining and power purposes; said ditch to tap the said Ten Mile stream at a point about 100 yards above the railroad station at Frisco, at which point a notice is posted and the building of a dam commenced; such ditch to run from the said dam along the right bank of the stream by course and distance as follows: (Here insert field notes of line of ditch, if surveyed, though general terms instead will suffice) to a point on the left bank of the Blue River about 100 yards above the town site of Dillon.

Preamble, other articles and acknowledgment as on page 39.

For another form, see Mining Rights, 14th Ed. 373; 15th Ed. 402.

Articles of Mutual Ditch Company.

ARTICLE 1. The name of said company shall be *The Roaring Fork Ditch Company*.

ARTICLE 2. The objects for which said company is created are to appropriate the waters of Roaring Fork to the extent necessary to supply the water to be carried by the ditch of said company or to acquire the right to the same by purchase.

To construct a ditch to divert the waters of said Roaring Fork from the intake of the ditch at a point 100 yards below the bridge of the Denver & Rio Grande Western Railroad crossing the Roaring Fork River in the ——— quarter of section ———, Township ———, Range ——— West of the 6th Principal Meridian and running thence: (Here insert field notes).

And to maintain the same for the use of the stockholders of said company, which stockholders shall be owners, lessees or persons interested in the land to be supplied by said ditch. To construct and maintain laterals from said ditch at the cost of the company or at the cost of the parties using the same as may be determined by the by-laws of the company or by contract with its stockholders. The water of said ditch is to be furnished for irrigation and domestic uses only.

The reservoir for the reinforcement of said ditch is above the dam in the ——— quarter of said section from which a side ditch is to be constructed to tap the reservoir and connect it with the main ditch.

Each stockholder shall be entitled during the irrigating seasons to inches of water from the total capacity of the ditch in the same proportion as his stock bears to the total number of shares issued and outstanding.

Preamble, other articles and acknowledgment as on page 39.

Articles of Lateral Company.

ARTICLE 1. The name of said company shall be *The Platte Avenue Lateral Company*.

ARTICLE 2. The object for which said company is organized is for the purpose of acquiring by purchase, title to the herein-after described lateral ditch, and also for the purpose of enlarging, maintaining and using said lateral ditch, which said lateral is connected with the canal of the Fort Morgan Reservoir and Irrigation Company, known as The Fort Morgan Canal, at a point hereinafter described; and to supply to the members of the said The Platte Avenue Lateral Company such quantities of water as they (and others who have heretofore used water through said lateral ditch) may severally be entitled to receive from The Fort Morgan Reservoir and Irrigation Company.

ARTICLE 3. To acquire by purchase, donation or otherwise, such land as may be at any time deemed necessary or expedient by said company for said lateral or for the enlargement or extension of the same. Also to levy and collect pro rata all such assessments as may from time to time be necessary for the enlargement, repairs, maintenance and superintendence of the said lateral.

ARTICLE 4. The point of commencement and general course of said lateral is as follows, to-wit: commencing at a point 174 feet west and 30 feet south of the quarter corner between Section 6, Township 3 North, Range 47 West of the Sixth Principal

Meridian and Section 1, Township 3 North, Range 58 West of the Sixth Principal Meridian, where the present headgate is now located; running from thence in a direct line along the south side of the county road and what is known as Platte Avenue in the Town of Fort Morgan east to point in northwest quarter of the southwest quarter of Section 3, Township 3 North, Range 57 West of the Sixth Principal Meridian, and at a point whence the quarter corner between Sections 3 and 4 bears north 69 degrees distance 70 feet.

ARTICLE 5. Said company is organized for the purpose of carrying water from the said Fort Morgan Canal to and for the several and respective stockholders of The Platte Avenue Lateral Company in proportion to the stock severally held by them. This being a mutual lateral irrigating company and not designed to sell or otherwise dispose of water and being for the mutual benefit of the mutual stockholders.

Preamble, other articles (beginning with article 3) and acknowledgment as on page 39.

The above form is copied from book 70, page 98, of the corporate records in the office of the Secretary of State.

Green Valley Ditch Company.

ARTICLE 2. The object for which said corporation is formed and incorporated is for the purpose of acquiring title to the irrigation ditch known as The Epperson Ditch, the headgate of which is located at a point on the west bank of the South Platte River, from which it derives its supply of water, whence the southeast corner of the northeast quarter of Section twenty eight (28), Township four (4) south, Range sixty-eight (68) west, bears north twenty-four degrees west 890 feet, from which headgate the ditch flows in a general northerly direction, and acquiring title to the certain feeder to the said The Epperson Ditch extending from Sand Creek, a tributary stream to the said South Platte River, the said feeder entering the said The Epperson Ditch at a point 6,371 feet down the channel of the said The Epperson Ditch from its headgate aforesaid, the headgate of the said feeder being located south 43 degrees 45 minutes west 1,990 feet from the northeast corner of the Section twenty-one (21), Township four (4) south, Range sixty-eight (68) west, including dam, flumes and easements appurtenant to or connected with the said The Epperson Ditch and the feeder aforesaid, all situate, lying and being in the City and County of Denver and State of Colorado, not including, however, any water

rights, or appropriations or laterals, whether private or operated in common, which shall be and are expressly reserved by the owners thereof and their successors in interest.

Also for the purpose of conveying water in the said The Epperson Ditch and its said feeder for irrigation purposes and maintaining and operating the same and carrying and distributing to the laterals connected with said ditch the said water for the exclusive use of the stockholders of said corporation, and for the purpose of doing whatever may be necessary or proper to carry into effect the objects for which said corporation is formed, it being hereby expressly provided that said corporation is and shall always remain a mutual corporation and shall be operated and all waters shall be carried and distributed by said corporation only for the use of the members thereof who shall hold stock therein.

The line of said ditch commencing at a point and thence easterly in a general northerly direction as aforesaid crosses the boundary line dividing the aforesaid Sections 28 and 21, and thence follows along down the channel of said ditch as now located to an upon and across Section 21 aforesaid, to and upon and across the east half of the southeast quarter of Section 16, Township 4 south, Range 68 west, the length of the main ditch channel being 10,580 feet from the headgate to the dam west and the length of the aforesaid feeder being 220 feet.

ARTICLE 3. The capital stock of our said corporation is \$10,000, to be divided into 1,000 shares of \$10 for each share, and said stock shall be assessable as in the by-laws of said corporation may be provided; *Provided, however,* That no assessment so levied shall exceed 10 per cent of the amount of par value of the stock issued and outstanding in any one year. Each share of the capital stock aforesaid shall entitle its holder of record on the books of the corporation under such rules as may be adopted in and by the by-laws of said corporation to the use each year of a pro rata share of all the water carried and distributed in the waterways of the said corporation available for the purpose aforesaid.

Preamble, other articles (beginning with article 3 and omitting article 4) and acknowledgment as on page 39.

The above form is from book 119, page 212, of the corporate records of the Secretary of State.

These forms are given to illustrate the variety of mode of expression in which the idea of mutuality and corporate objects may be expressed. The variations are great but

not material where the corporate purpose and intended restrictions are plainly expressed.

It is to be further observed that all these ditch company forms are supposed to be supplemented by by-laws regulating the manner of distribution of water. The following are the

By-Laws of The Green Valley Ditch Company.

ARTICLE 1.

Incorporation.

The name of this company is *The Green Valley Ditch Company*, a domestic corporation, incorporated October 8, 1906.

ARTICLE 2.

Seal.

The seal of this corporation shall contain the word "Seal" in the center thereof, with the words "The Green Valley Ditch Company," "1906," in the form of a circle, an impression of which is attached to the margin hereof.

ARTICLE 3.

Officers.

The officers of this corporation shall consist of a President, a Vice-President and a Secretary and Treasurer, who shall be chosen at the first meeting of the Board of Directors after the annual meeting of the stockholders each year.

ARTICLE 4.

Directors.

The Board of Directors shall consist of three members, and vacancies in the board shall be filled by ballot of the stockholders.

ARTICLE 5.

Duties of Officers.

The officers and directors of this corporation shall perform all duties and acts incident and such as usually appertain to their respective positions, and such as they are severally authorized to perform under the law and the articles of incorporation as well as the by-laws of this corporation.

ARTICLE 6.

Meetings.

Section 1. The Board of Directors shall meet in regular session on the first Monday after the first Tuesday in each month at 7:30 o'clock p. m., and special meeting may be called at any

time by the President or any two directors by giving at least twenty-four hours' notice to the other directors of the time, place and purposes of meeting. Two directors shall constitute a quorum.

Sec. 2. The annual meeting of stockholders for the election of directors and the transaction of other business shall be held at the office of this corporation in the City and County of Denver, and State of Colorado, on the first Monday after the first Tuesday in the month of October of each year, commencing at the hour of 8 o'clock p. m.

Special meetings of stockholders may be called according to law; *Provided*, That meetings for the consideration of the reports of officers and the discussion of the affairs of this corporation may be called on three days' notice to the stockholders.

ARTICLE 7.

Debts.

No debts shall be contracted against this corporation except by order of the Board of Directors or the Executive Committee.

ARTICLE 8.

Executive Committee.

The Executive Committee shall consist of the President and Secretary-Treasurer, and shall have full power and authority to perform, do and authorize all matters and things required of said corporation or necessary or proper, subject to the supervision of the Board of Directors.

ARTICLE 9.

Transfers.

Transfers of stock, to entitle a stockholder to vote, must be made and registered at least three days prior to the time of meeting.

ARTICLE 10.

Assessments.

The capital stock of this corporation is Ten Thousand Dollars, divided into one thousand shares of Ten Dollars each, and said stock is assessable as in the articles of incorporation provided.

The Board of Directors of this corporation shall have the power to levy assessments on said stock for all lawful purposes; *Provided, however*, That no assessment or levy shall exceed 10 per cent of the amount of the par value of the stock issued and outstanding in any one year, and that in the case of the making of any such levy the stockholders of record on the books of the corporation shall be entitled to at least ten days' previous notice

- of the levy of any such assessment, to be given prior to the time of payment of such assessment either personally or by leaving at the place of residence of any such stockholder such notice with any member of such stockholder's family over the age of fifteen years, or by depositing such notice in the postoffice at Denver, Colorado, addressed to such stockholder at the place of residence as evidenced by the stock record of this corporation; the said notice shall be in writing, and shall state the total amount of the assessment and also the pro rata share or per centum thereto to be paid by the stockholders thus notified, and shall also state the time or times required for the payment thereof, and may prescribe that the same shall be paid partly or wholly in money or partly or wholly in labor, and the Board of Directors shall have authority to determine and fix the value or amount to be allowed for any such labor to be performed on the ditch or property of said corporation at such time or times and in such manner as the Board of Directors or the Executive Committee may require.

In default of the payment of any such assessment, notice whereof shall be given in the manner and form herein provided, the stock liable therefor may be sold in the manner provided by law.

ARTICLE 11.

Use of Water.

Each share of the capital stock of this corporation shall entitle its holder of record on the books of the corporation to the use each year of a pro rata share of all the water carried and distributed in the waterways of said corporation under the direction of the Executive Committee or Board of Directors.

ARTICLE 12.

Amendments.

These by-laws may be changed, amended or revoked by the unanimous ballot of the directors at any meeting of the board.

Article 6, Supra—Notice.

The statute requires longer notice for stockholders' meetings than required in the proviso to the above article 6, but it will be noted that the proviso is limited to advisory conference and does not provide for any corporate action on the short call. But on such call even corporate action could be taken if all the stockholders were present.—
Page 188.

Article 10, Supra—Assessments.

The above article 10 is not in exact accord with section 1095 M. A. S., which allows the directors to assess only on failure of the stockholders to act.

Construing section 1095 M. A. S., as we understand it, in connection with corporate usage the stockholders should in the first instance authorize the levy or call, and the levy or call should then be made by resolution of the board of directors.

If the board by the first day of April have taken no action, under said amendment of 1917 assessment is to be made by the board without stockholders' direction and the resolution, in strictness, should recite the failure of the stockholders to make any such order in the premises. Section 1095 M. A. S.; section 993 M. A. S., cited in 1095 M. A. S.

CHAPTER VI.

FLUME COMPANIES.

Sec. 1102 M. A. S. Additional Statements in Certificate.

When any company shall organize, under the provisions of this Act, to form a company for the purpose of constructing a flume, their certificate, in addition to the matters required in the second section of this Act, shall specify as follows: The place of beginning, the terminus, and the route, so near as may be, and the purpose for which such flume is intended, and where organized, according to the provisions of this Act, said company shall have the right of way over the line proposed in such certificate for such flume; *Provided*, It does not conflict with the rights of any former fluming, ditching, or other company.—R. S. '08, § 998.

[Section 2 above referred to is Sec. 980 M. A. S.]

They are given the same rights and placed under the same restrictions as ditch companies, but are allowed four years to complete the flume.—Sec. 1093 M. A. S.

We can see no difference between a ditch and a flume except that the latter is troughed or under cover. Where

a ditch is flumed it does not cease to be a ditch. There is no reason for any distinction whatever, but the above distinctions are as the statute makes them.

The form of articles is the same as for a ditch company changing the word "ditch" to "flume," and we see no objection to calling a company a "*Ditch and Flume*" company, nor do we consider that the omission of the word "flume" would be any irregularity although the ditch was in fact constructed as a flume for the greater part of its course.

CHAPTER VII.

PIPE LINE COMPANIES.

Sec. 1103 M. A. S. Matters To Be Set Forth in Their Articles—Right-of-Way.

Whenever any three or more persons associate under the provisions of said Chapter XIX, of the General Statutes of the State of Colorado, to form a company, for the purpose of constructing a pipe line for the conveyance of gas, water or oil, they shall in their certificate, in addition to the matters required in section 2 (two) of said Chapter XIX, specify as follows:

The places from and to which it is intended to construct the proposed line or lines, and any pipe line company formed under the provisions of said Chapter XIX shall have the right of way over the line or lines named in the certificate, and shall also have the right to convey gas, water or oil by said lines as stated in such certificate, through lands of the State of Colorado, and lands of individuals, with the right to erect thereon pump stations, storage tanks, and other buildings necessary for such business, and if any such corporation shall be unable to agree with such individuals owning any of such lands for the purchase of any real estate required for the purpose of any such corporation or company, or the transaction of the business of the same, or for right of way, or any other lawful purpose connected with or necessary to the operation of said company, such corporation may acquire such title in manner provided by law.—R. S. '08, § 999.

[Section 2, of Chapter 19, referred to is Sec. 980 M. A. S.]

The section gives the right of way for the proposed line of route and repeats the right to condemn.

Articles of Pipe Line Company.

ARTICLE 1. The name of said company shall be *The Boulder Valley Pipe Line Company*.

ARTICLE 2. The objects for which said company is created are to construct a pipe line for the carriage and transportation of oil for hire from the oil wells near the City of Boulder, County of Boulder, State of Colorado, to tanks to be erected at the mouth of Boulder Creek, from which tanks the oil shall be distributed. The main line to start from the N. W. $\frac{1}{4}$ of Sec. 6, Tp. 1 S., R. 69 W. of the 6th P. M., with branch lines to any and all wells in what is known as the Boulder Oil Basin. The main line beginning at a stake chiseled B. V. P. L. C. at the southeast corner of said N. W. $\frac{1}{4}$ of Sec. 6, and running thence (we advise description by field notes).

Preamble, other articles and acknowledgment as on page 39.

CHAPTER VIII.

WATER USERS' ASSOCIATIONS.

Sec. 1039 M. A. S. Exempt From Income and Annual Tax—Incorporation Fee.

That any water users' association which is organized in conformity with the requirements of the United States, under the Reclamation Act of June 17, 1902, and which, under its articles of incorporation, is authorized to furnish water only to its stockholders, shall be exempt from the payment of any income tax and from the payment of any annual franchise tax, but shall be required to pay, as preliminary to its incorporation, only a fee of twenty (\$20) dollars for the filing and recording of its articles of incorporation and the issuance of certificate of incorporation.—R. S. '08, § 1000.

Sec. 1040 M. A. S. May Furnish Recorder With Books for Recording Stock Subscriptions.

That any water users' association organized in conformity with the requirements of the United States, under the Reclama-

tion Act of June 17, 1902, may, with the consent of the county commissioners, furnish the clerk and recorder of any county in Colorado, a book, or books, containing printed copies of its articles of incorporation and forms of subscription for stock, and the county clerk and recorder to whom such book or books shall be furnished, shall use the same for recording the stock subscriptions in such association, and the charges for the recording thereof shall be made on the basis of the number of words actually written therein.—R. S. '08, § 1001.

. [Act of June 17, 1902, referred to is found in Volume 32, Stat. L., page 388.]

[Are the above two sections repealed by Sec. 6284 M. A. S?]

As to the query contained in the last note above printed we are of opinion that the sections are not repealed by section 6284 M. A. S.

When the government undertakes any reclamation project it requires a water-users' association to be organized, composed of the owners of lands within it. With such association the Secretary of the Interior enters into contract concerning the construction of the project and the granting of water rights to the members of the association.

The Reclamation Service has issued (1908) a book containing a series of circulars entitled "Organization of Water Users' Associations," prescribing forms for articles of incorporation and for by-laws; also forms of contracts to be entered into between land owners, and the association and between the association and the Secretary of the Interior.

The forms for charter and by-laws printed in the circular contain many provisions not required by State statute, and as the Department demands the adoption of such provisions without change the formula of the book should be complied with.

But the department now says that: "it is the settled policy of the Reclamation Service to advise the formation of Irrigation Districts, in place of Water Users' Associations."

An irrigating company which supplies water for a reservoir to other and different corporations, who are

charged with its delivery and distribution to the consumers, is not liable for the default of such distributing corporations, even though some of the officers in the two corporations are held by the same persons.—Hood v. Burlington Co., 64 Colo. 318, 171 Pac. 371.

CHAPTER IX.

BRIDGE AND FERRY COMPANIES.

Sec. 1104 M. A. S. Additional Statements in Certificate.

When three or more persons shall associate, under the provisions of this Act, to form a company for the purpose of constructing a bridge, or establishing a ferry over any of the streams of water in this State, their certificate, in addition to the matters required in the second section of this Act, shall specify as follows: The place where said bridge, or places at which such bridges or ferry is to built or established, and on what streams,

and that the banks on both sides of the stream where the said bridge or ferry is to built or established are owned by said company,

or that they have obtained in writing the consent of the owners of the banks where the said bridge is to be built, to erect the said bridge, or establish the said ferry as aforesaid,

or that the banks at such place are a public highway.—R. S. '08, § 1005.

[Section 2 above referred to is Sec. 980 M. A. S.]

Sec. 1105 M. A. S. Shall Be Kept Open — Repairs — Rebuilding.

Any bridge built, or ferry established, under the provisions of this Act, shall at all times be kept in good and safe condition for travel, both night and day, unless the same be rendered impassible by reason of flood or high water, and any bridge or ferry so built or established, shall, if destroyed by flood, fire or other causes, be rebuilt or established within a period of nine months from such destruction, or the rights acquired under this Act shall be forfeited and cease to exist.—R. S. '08, § 1006.

Sec. 1106 M. A. S. Rate of Toll—Penalty for Overcharge.

The company, previous to receiving any toll upon said bridge or ferry, shall set up and keep in a conspicuous place on said bridge or ferry, a board, on which shall be written or printed in a plain, legible manner, the rates of toll which have been prescribed by the county commissioners of said county, and if any company shall demand or receive any greater rate of toll than the rate prescribed by said tribunal, then they shall be subject to a fine of ten dollars, and no company formed under the provisions of this Act shall demand or receive toll whenever said bridge or ferry is not in a good and safe condition for travel, and any person having paid toll on such bridge or ferry, and finding the same in a bad or unsafe condition for loaded teams, shall have the right to make complaint before any justice of the peace in the county in which the bridge or ferry is located, who shall proceed as is provided in section eighty-one (81) of this Act.—R. S. '08, § 1007.

[Section 81 referred to is Sec. 1090 M. A. S.]

Sec. 1107 M. A. S. Shall Not Obstruct Ford.

No charter for a ferry or bridge company, granted by the legislature of this territory, shall be so construed as to authorize such company to exclude or prevent the public from the free use of any ford that may cross any stream at or near the ferry or bridge of such company.—R. S. '08, § 1008.

Sec. 1108 M. A. S. Penalty for Obstructing Ford.

The owner or keeper of such bridge or ferry shall not in any way obstruct the passage to or from any ford across any stream; and any person, upon conviction of thus obstructing such passage, shall be liable to fine of not less than ten nor more than fifty dollars.—R. S. '08, § 1009.

Bridge Company Articles.

ARTICLE 1. The name of said company shall be *The San Miguel River Bridge Company*.

ARTICLE 2. The objects for which said company is created are to construct and maintain and collect tolls for use of a bridge over the San Miguel River at a point 100 yards below the mouth of Atkinson Creek,* the banks on both sides of the

stream where the abutments of the bridge are to stand being owned by said incorporators, and it being intended to convey the same to the said company immediately upon the filing of these articles. Or, (after the *)

the said incorporators having obtained the consent in writing of the owners of the banks at the points of landing of the bridge to erect the said bridge. Or, (after the *)

the banks on both sides of the stream where the abutments of the bridge are to stand being a public highway.

Preamble, other articles and acknowledgment as on page 39.

The same form fits a ferry charter with slight obvious changes.

The above section 1104 M. A. S. speaks of the landings being "owned by said company," overlooking the fact that a company can own nothing before it exists. In this, as in many other instances, the statute cannot be literally followed.

CHAPTER X.

BANKS.

Act of 1913, p. 116, Entitled, "An Act Relating to Banks and Bankers."

Sec. 317 M. A. S. "Bank" Defined.

The word "Bank," as used in this Act, shall include every person, co-partnership and corporation, except National Banks, engaged in the business of banking in the State of Colorado.—L. '13, p. 116, § 1.

Sec. 318 M. A. S. Individuals, When Considered Bankers.

When by the provisions hereof anything is required to be done by any incorporated bank or its board of directors, or any officer, director or employe thereof, or their right or power to do a specified act is denied, the same act shall be done, or not, as the case may be, by individuals or co-partners engaged in the banking business.—L. '13, p. 116, § 2.

Sec. 319 M. A. S. Minimum Capital.

No bank hereafter organized shall do business unless it shall have a bona fide minimum paid up cash capital as follows: Ten thousand dollars when located in a city or town having a population less than five hundred; fifteen thousand dollars when located in a city or town having a population of more than five hundred and less than twenty-five hundred; twenty thousand dollars in a city or town having a population of more than twenty-five hundred and less than fifteen thousand; thirty thousand dollars in a city or town having a population of more than fifteen thousand and less than fifty thousand, and fifty thousand dollars in a city or town having a population of more than fifty thousand.—L. '13, p. 116, § 3.

Sec. 320 M. A. S. Assets To Be Segregated.

All persons, co-partnerships and corporations, except trust companies, engaged in business a portion only of which is banking, shall set apart and keep separate so much capital for banking as may be necessary for conducting a bank under Section 3 hereof, and shall also keep separate and apart from its other assets the assets of said banking department. The capital so set apart and the assets of said bank or banking department shall be first applicable to the payment of the creditors thereof, as distinguished from the general creditors of the persons, co-partnerships or corporations conducting the same.—L. '13, p. 117, § 4.

Sec. 321 M. A. S. Articles of Incorporation.

Any number of persons, not less than three, may organize a corporation to engage in the business of banking. Such persons shall make, sign and acknowledge before a notary public a certificate in triplicate, specifying: (a) the name of such corporation; (b) the purposes for which such corporation is organized; (c) the city, town and county in which the business of such corporation is to be conducted; (d) the amount of the capital stock of such corporation, and the number of shares of the par value of one hundred dollars each into which the same shall be divided; (e) the names and residences of the persons who have in good faith agreed to subscribe for said capital stock, and the amount agreed to be subscribed by each; (f) the period during which such corporation is to exist; (g) the names and residences of the directors who shall serve until the second Tuesday in January following the date of said certificate and until their successors are elected and qualified.—L. '13, P. 117, § 5.

Sec. 322 M. A. S. Triplicate Filings.

Said incorporators shall file one copy of said certificate in the office of the Secretary of State, and one copy in the office of the Clerk and Recorder of the County in which such corporation is to do business, and one copy in the office of the State Bank Commissioner.—L. '13, p. 117, § 6.

Sec. 323 M. A. S. First Meeting of Directors.

When such certificates have been filed, the directors therein named shall meet, organize, adopt by-laws, and elect and approve the bonds of the officers of the corporation, but until thereunto authorized by the State Bank Commissioner, said corporation shall transact no other or further business, except to receive payment for and issue the capital stock of the corporation.—L. '13, p. 117, § 7.

Sec. 324 M. A. S. File By-Laws, Oaths and Statement.

As soon as the capital stock of the corporation shall be fully paid in cash, a copy of the by-laws of said bank and the oaths of its directors, shall be filed in the office of the State Bank Commissioner, together with a statement executed on behalf of the corporation and sworn to by its president and cashier or secretary certifying; the population of the city or town in which such corporation will do business; the full payment of the entire capital stock of said corporation in cash; the names and residences of the officers, directors and stockholders of said corporation; the amount of stock owned by each, and the fact that such corporation is fully prepared to transact the business for which it was organized. Any individual or co-partnership desiring to conduct a banking business shall file in the office of the State Bank Commissioner a similar statement.—L. '13, p.118, § 8.

Sec. 325 M. A. S. Certificate of Authority—Use of Word "State" in Firm Name.

If the State Bank Commissioner shall be satisfied that a bank has been legally organized in full conformity with the provisions of this Act, and the capital thereof paid in cash, he shall issue, except as hereinafter provided, to such bank a certificate authorizing it to conduct the business proposed, and no bank shall advertise or hold itself out as engaged in banking nor shall it transact any business until so authorized. If the State Bank Commissioner, after an examination, believes for any reason, that authority to begin business should not be granted, he may

refuse to grant the same. In such case he shall file a written statement with a Board consisting of the Governor, Attorney General, and the State Treasurer, giving in detail his reasons. After notice to all concerned and after a hearing, said Board may order the State Bank Commissioner to issue the authority or may approve his action in not granting authority. Individuals or co-partnerships engaged in banking shall not use the word "State" as a part of the bank or firm name.—L. '13, p. 118, § 9.

Sec. 326 M. A. S. Amendment of Articles.

In the event of an amendment to the certificate of incorporation of any bank, certificates setting forth such amendment shall be executed in triplicate and be filed in the offices of the Secretary of State, the County Clerk and Recorder or Recorder of the County in which such bank is doing business, and the State Bank Commissioner, together with a statement similar to that required by Section 8 [§ 324 M. A. S.] hereof.—L. '13, p. 118, § 10.

Sec. 327 M. A. S. Approval of Such Amendment.

If the State Bank Commissioner shall be satisfied that such amendment has been legally made, and that it in no wise impairs the financial standing of said bank, he shall issue to said bank a certificate approving said amendment and authorizing said bank to conduct business pursuant thereto, and no such amendment shall be effective until so approved by the State Bank Commissioner.—L. '13, p. 119, § 11.

Sec. 328 M. A. S. Board of Directors—Shares Held by Each.

The business of incorporated banks shall be under the supervision and control of a board of directors. Every director shall own not less than five shares in any bank with a capital stock of \$30,000 or less, and not less than ten shares in a bank with a capital stock of more than \$30,000, and said stock shall be in no wise pledged or incumbered. The number of directors shall be as fixed by the by-laws of the bank, but shall be not less than three or more than twenty-one. Co-partners conducting a bank shall each own at least two per cent thereof in no wise pledged or incumbered.—L. '19, § 1, amending L. '13, p. 119, § 12.

Sec. 329 M. A. S. Annual Meeting of Directors — Vacancies.

The directors of all incorporated banks shall be elected annually by the stockholders thereof at a meeting to be held on the second Tuesday in January, and shall hold office until their successors are elected and qualified. Vacancies existing in said board shall be filled as provided by the by-laws of the bank.—L. '13, p. 119, § 13.

Sec. 330 M. A. S. Oath of Directors.

Every director of an incorporated bank, and every owner of any portion of an unincorporated bank actually engaged in the management thereof, shall take and subscribe to an oath that he will, so far as the duty devolves upon him, diligently and honestly administer the affairs of the bank; that he will not knowingly violate, nor willingly permit to be violated, any provision of the law; that he is the owner in good faith of at least that part of the capital stock of said bank or that portion of the capital employed therein, specified by Section 12 [§ 328 M. A. S.] hereof.—L. '13, p. 119, § 14.

Sec. 331 M. A. S. Annual Selection of Officials.

The executive officers of all incorporated banks shall be elected annually by the Board of Directors, at a meeting to be held on the second Tuesday in January, following the annual meeting of stockholders.—L. '13, p. 119, § 15.

Sec. 332 M. A. S. Bonds.

Before assuming their duties, bonds shall be filed by all bank officers and employes having the care, custody or control of any of the funds or securities of the bank, indemnifying the bank against all loss which may be incurred by reason of any dishonest, fraudulent, or negligent act or omission of such officers or employes. Said bonds must be executed by a surety company authorized to transact business in the State of Colorado or by at least five individual sureties or be secured by collateral, and shall be approved by said bank and the State Bank Commissioner, and shall be retained by said bank. If furnished by a surety company, the premium on or for said bond shall be paid by the bank.—L. '13, p. 119, § 16.

Sec. 333 M. A. S. Annual List of Stockholders and Directors—Penalty.

Every bank shall, within ten days after the second Tuesday in January of each year, upon a form to be furnished by the State Bank Commissioner, file with the State Bank Commissioner a statement, sworn to by its president or vice-president and cashier or secretary, disclosing the names and residences of all directors, stockholders, officers or owners thereof, together with the amount of stock or interest held by each. In the event of any change in the directors, officers, stockholders or owners of any bank, such changes shall forthwith be likewise certified to the State Bank Commissioner. Every bank which fails to comply with this section shall pay to the State Bank Commissioner a penalty of \$25.00 for each day's delay.—L. '13, p. 119, § 17.

Sec. 334 M. A. S. Post Statement and List.

Every bank shall keep conspicuously posted in its place of business a copy of its last officially published statement, together with a notice signed by the president or vice-president and cashier or secretary, disclosing the names of the officers, directors, stockholders or owners of said bank as of the date said statement was made.—L. '13, p. 120, § 18.

Sec. 335 M. A. S. Directors Meetings—Examinations—Report.

The board of directors or owners of every bank shall hold regular meetings at least once each month. At not less than two of such meetings during each year, which meetings shall be at least five months apart, they shall make a thorough examination of the books, records, funds, securities and other property held or owned by the bank, and shall enter upon their minutes the result of such examination. Such examination shall be made when practicable without the assistance of the managing officers of the bank and a report thereof shall be transmitted to the State Bank Commissioner on the forms and in the manner provided by him.—L. '13, p. 120, § 19.

Sec. 336 M. A. S. Five Reports Each Year—Publication of Reports.

Every incorporated bank shall make and file with the State Bank Commissioner five reports during each calendar year, according to the form which may be prescribed by him, verified by the oath of the president or vice-president and cashier and secretary, and attested by the signature of three or more of the

directors. Each such report shall exhibit in detail, and as may be required by the State Bank Commissioner, the resources and liabilities of the bank at the close of business on a day past to be specified by said State Bank Commissioner in writing; such days past to be the days named by the Comptroller of the Currency of the United States in his official calls for reports from National Banks. Said reports shall be transmitted to the State Bank Commissioner within ten days after his request therefor, and the substance thereof shall be published within ten days by the bank, in such form as may be prescribed by the State Bank Commissioner, in a newspaper of general circulation printed in the city or town where such bank is located; or if there is no newspaper of general circulation printed in said city or town, then in the newspaper of general circulation published nearest thereto. Proof of such publication shall be filed with the State Bank Commissioner within ten days from the date of such publication, and in such form as he may prescribe. The State Bank Commissioner shall have power to call for special reports from any particular bank whenever, in his judgment, the same are necessary to a full and complete knowledge of its condition; but no such special report, nor any summary thereof, shall be required to be published. The reports required by and filed pursuant to this Act shall be in lieu of all others required by law from banks. Every bank which fails to comply with this Section shall pay to the State Bank Commissioner a penalty of \$25.00 for each day's delay.—L. '13, p. 121, § 20.

Sec. 337 M. A. S. Information to Commissioner—Witnesses.

Banks, and all directors, officers and employes thereof, and all other persons in this State shall upon request of the State Bank Commissioner, furnish all information within their knowledge, and submit to him, all books, records, written instruments and documents in their possession or under their control, touching the business of such bank; the State Bank Commissioner shall have the power to administer oaths and affirmations and to examine on oath or affirmation, and to summon, and by attachment compel the attendance of any person or persons in this State to testify under oath before him, in relation to the affairs of any bank.—L. '13, p. 122, § 21.

Sec. 338 M. A. S. False Statements and Entries.

No officer, director, owner or employee of any bank shall subscribe to or make any false statement or report respecting

the affairs of the bank, nor make any false entries nor omit to make any statement or entry which should be made or which should appear in the books or in any statement of such bank, with intent to deceive or injure any person.

Any person who shall be instrumental in the making or procuring to be made any false statement or report respecting the affairs of any bank, shall be deemed the principal offender.

—L. '13, p. 122, § 22.

Sec. 339 M. A. S. Embezzlement.

No officer, director, owner or employe of any bank shall, directly or by indirection, embezzle, abstract or misapply, or cause to be embezzled, abstracted or misapplied, any of the funds or securities or other property of or under the control of a bank, with intent to deceive, injure, cheat, wrong or defraud any person.—L. '13, p. 122, § 23.

Sec. 340 M. A. S. Combined Capital and Surplus.

After January 1, 1914, the combined capital and surplus of every bank shall be equal to at least ten per cent of its average daily deposits during the last preceding calendar year.—L. '13, p. 122, § 24.

Sec. 341 M. A. S. Reserve—Savings Bank Reserve— Cash on Hand—Bank Deposits, Where Made.

Except as in this section provided, every bank, except savings banks, shall at all times keep a reserve equal to twenty per cent of its deposits. Every savings bank shall at all times keep a reserve equal to fifteen per cent of its savings deposits and in addition thereto shall keep a reserve equal to twenty per cent of its other deposits. All banks shall hold in cash not less than twenty per cent of their required reserve. All banks may hold in Liberty Bonds and United States Certificates of Indebtedness not to exceed thirty per cent of their required reserve. That portion of the reserve not hereby required to be held in cash may be kept on deposit in national banks located in cities designated by federal law as reserve cities, or on deposit in banks or trust companies designated by the State Bank Commissioner as reserve banks. Every reserve bank in this state shall at all times keep a reserve equal to twenty-five per cent of its deposits. The State Bank Commissioner shall from time to time designate as reserve banks such banks and

trust companies in other states as he may deem necessary.—L. '19, p. 302, § 1, amending L. '13, p. 122, § 25.

Sec. 342 M. A. S. Impaired Capital or Reserve.

Whenever the capital or reserve of any bank shall be impaired, it shall make no new loans or discounts except upon sight bills of exchange drawn against actually existing values. When the capital or reserve of any bank shall be impaired, it shall be fully restored within thirty days from such time as the State Bank Commissioner shall notify said bank of such impairment.—L. '13, p. 123, § 26.

Sec. 343 M. A. S. Assessment on Stock.

When the capital of any incorporated bank is impaired, the Board of Directors of such bank shall make a pro rata assessment upon the stock of said bank to make good such deficiency. If any stockholder fails or neglects to pay the amount of such assessment against his stock on or before thirty days after notice thereof, an action may be commenced by said bank to recover the same.—L. '13, p. 123, § 27.

Sec. 344 M. A. S. Real Property.

Banks may purchase and hold such real property as may be necessary for their immediate accommodation in the transaction of their business, but not otherwise unless necessarily acquired in the protection and satisfaction of previously existing loans made in good faith. Any real property so acquired shall be sold by the bank within ten (10) years, and sooner if it can be done without impairing the bank's investment in such property. No bank shall, directly or indirectly, engage in trade or commerce.—L. '15, p. 134, amending L. '13, p. 123, § 28.

Sec. 345 M. A. S. Loans on Stock—Purchase of Stock.

No bank shall make any loan or discount upon the security of its own capital stock. No bank shall loan to or discount any paper of its stockholders upon the security of the capital stock of any other bank. No bank shall loan to or discount any paper of any person or persons upon the security of the capital stock of any other bank in excess, in the aggregate, of twenty-five per cent of the total shares of such bank. No bank shall purchase its own stock, nor the stock of any other corporation, ex-

cept such as it may necessarily acquire in the protection or satisfaction of previously existing loans made in good faith. Any stock so acquired shall be sold by the bank within three years and sooner if it can be done without impairing the bank's investment in the same.—L. '13, p. 123, § 29.

Sec. 346 M. A. S. Mortgage Loans.

No bank, except savings banks, shall make, or purchase loans secured by mortgage or trust deed on real estate in excess of twenty-five per cent of its total interest-bearing securities; nor, except in the case of savings banks, shall any such loan be for a longer period than three years. Banks may make, purchase and hold loans for not to exceed five years upon first trust deeds or first mortgages on real estate, worth at least double the amount of the loan, to the extent of fifty per cent of their savings deposits. No bank shall make or purchase loans on real estate unless such loans are secured by first trust deeds or first mortgages, except as additional security to loans previously made by such bank.—L. '13, p. 123, § 30.

Sec. 347 M. A. S. Investment of Funds.

Except as permitted by Section 30 [§ 346 M. A. S.] hereof, savings deposits shall not be loaned or invested except upon or in the following evidences of indebtedness, to-wit: Securities of the United States, of the several States of the United States, Counties, Cities, Towns, Irrigation Districts, School Districts, first class commercial paper, negotiable paper secured by collateral having an actual cash market value in excess of the loan so secured and first mortgage bonds of steam or street railway, water, light, gas and industrial corporations which have earned at least four per cent net per annum on their capital stock during the five years immediately preceding the date of such loan or loans and have not defaulted in the payment of the principal or interest of any debt during such period.—L. '13, p. 123, § 31.

Sec. 348 M. A. S. Savings Deposit Regulations—Pass Books.

Savings deposits shall be repaid to the depositors under such regulations as the board of directors shall, from time to time, prescribe. Such regulations shall be printed in depositor's pass books and also conspicuously exposed in some place accessible

and visible in the business office of the bank; and no alteration which may at any time be made in the rules and regulations shall in any manner affect the rights of a depositor within the contract period in respect to deposits made previous to such alteration.—L. '13, p. 124, § 32.

Sec. 349 M. A. S. Loans to Officers—Other Restrictions on Loans.

No bank shall loan to any officer or employe thereof. No officer or employe of any bank shall become endorser for any person, firm or corporation borrowing money therefrom without the approval of the board of directors entered of record in the minutes of the board. No bank shall loan to the State Bank Commissioner, or any of his deputies, nor shall the said State Bank Commissioner or any of his deputies become endorser for any person, firm or corporation borrowing money therefrom. No unincorporated bank shall loan to any person or co-partner owning an interest therein. No individual or co-partner owning an interest in an unincorporated bank shall become endorser for any person, firm or corporation borrowing money therefrom, nor shall any note or obligation of such individual or co-partner be considered an asset of such bank.

Loans to directors in excess of ten per cent of the capital stock and surplus of the bank shall be made only with the approval of a majority of the board of directors, exclusive of the borrower, entered of record in the minutes of the board. No bank shall become the creditor of its stockholders collectively in an amount exceeding forty per cent of its capital.—L. '13, p. 125, § 33.

Sec. 350 M. A. S. Loans and Investments in Excess of Twenty Per Cent.

No bank shall become the creditor of any person, firm or corporation, including in the liabilities of the firm the liabilities of the members thereof, and including in the liabilities of any person the liabilities of any firm of which such person is a member, in an amount exceeding twenty per cent of its capital stock and surplus, but the discount of bills of exchange drawn against actually existing values, loans upon produce in transit and upon warehouse and elevator receipts as collateral security, and negotiable paper secured by collateral having an actual market value in excess of the paper secured, shall not be considered as money

borrowed. And in ascertaining the amount due to the bank from its stockholders, such paper shall not be considered as money borrowed. No bank shall invest more than twenty per cent of its capital and surplus in the notes, bonds or other securities of any person, firm or corporation. Provided, however, that this section shall not operate to prevent any bank from purchasing for immediate resale all or any part of any issue of securities of the United States, of the several States of the United States, counties, cities, towns, irrigation districts and school districts, and first mortgage bonds of steam or street railways, water, light, gas and industrial corporations which have earned at least four per cent net per annum on their capital stock during the five years immediately preceding the date of such purchase, and have not defaulted in the payment of the principal or interest of any debt during such period.—L. '13, p. 125, § 34.

Sec. 351 M. A. S. Limitation on Borrowing and Re-Discounts—Redemption of Securities.

No bank shall borrow money for a period exceeding thirty days, except it be evidenced by its promissory note. No bank shall borrow money or rediscount paper in excess of the amount of its capital stock and surplus, nor without the authority of the board of directors. If any bank shall hypothecate or pledge any of its securities or other assets as collateral for money borrowed, and said bank shall be taken possession of by the State Bank Commissioner at any time before such pledge or hypothecation shall be foreclosed, a grace of thirty days after the date when the State Bank Commissioner so takes possession shall be allowed in which such bank or the State Bank Commissioner shall be permitted to redeem such securities or other assets by the payment of the amount due under the terms of the existing contract.—L. '13, p. 126, § 35.

Sec. 352 M. A. S. Limit of Deposit With Other Banks.

No bank shall carry on deposit with any bank for more than sixty days in any calendar year an amount in excess of twenty per cent of the total of its own deposits.—L. '13, p. 126, § 36.

Sec. 353 M. A. S. Interest on Time Deposits.

No bank shall pay, directly or indirectly, interest on savings or time deposits in excess of four per cent nor on deposits subject to call in excess of three per cent per annum; provided

that upon the production of satisfactory evidence to the State Bank Commissioner that competing national banks in the vicinity or locality wherein State banks are operating are paying a higher rate of interest than is provided for in this section, the State Bank Commissioner may authorize such State banks affected to pay such rate as may in his judgment be deemed advisable, which shall in no event exceed the rate of interest paid by such competing national banks.—L. '13, p. 126, § 37.

Sec. 354 M. A. S. Transfer of Stock by Director.

No sale of the stock of any bank shall be valid as against the bank or any creditor thereof so long as the holder is indebted to the bank, either as principal or surety, on any past due obligations, nor in such case shall any dividend or interest be paid on such shares, but the same shall be retained by the bank and applied to the discharge of such liabilities.—L. '13, p. 127, § 38.

Sec. 355 M. A. S. Personal Liability of Shareholders.

The shareholders of every banking corporation shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts and engagements of said corporation, to the extent of double the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares. The term shareholders shall apply not only to such persons as appear on the books of the bank as shareholders, but also to every owner of stock, legal or equitable, although the same may stand on such books in the name of another person, but not to a person who holds the stock as collateral security for the payment of a debt.—L. '13, p. 127, § 39.

Sec. 356 M. A. S. Receiving Deposits When Insolvent.

No bank shall receive any deposit when it is insolvent, nor shall any officer, director or employe of any bank knowingly permit the same. An action may be had to recover any deposits received in violation hereof, and the bank and all officers, directors and employes thereof knowingly permitting the same, and their personal representatives, may be joined as defendants, and joint and several judgment be recovered against them.

No officer, director or employe of any bank shall receive or assent to the reception of any deposit of money or other valuable thing by such bank or create or assent to the creation of any

debt or liability by such bank after he shall have had knowledge of the fact that such bank is insolvent. Upon the trial of any person charged with an offense under this section, evidence of the failure of such bank at any time within thirty days after the reception of such deposit or the creation of such indebtedness, shall be received as prima facie evidence of knowledge on the part of the person charged, that such bank was insolvent at the time of the reception of such deposit or the creation of such indebtedness.—L. '13, p. 127, § 40.

Sec. 357 M. A. S. Preference of Creditors Forbidden.

No bank shall sell, assign or transfer any of its assets when insolvent, or in contemplation of insolvency, with the intention of preferring any creditor or preventing the application of such assets to the satisfaction of its debts, nor shall any officer, director or employe of any bank knowingly authorize or permit the same to be done.—L. '13, p. 127, § 41.

Sec. 358 M. A. S. Commissions to Officers Forbidden.

No officer, director or employe of any bank shall take or receive for himself, directly or indirectly, any commission, compensation, remuneration, gift, speculative interest or other thing of value as an inducement to the making of any loan by or out of the funds of such bank, or the purchase or sale of any securities for or on account of such bank.—L. '13, p. 128, § 42.

Sec. 359 M. A. S. When Deemed Insolvent.

A bank shall be deemed insolvent (a) when the actual cash market value of its assets is insufficient to pay its liabilities other than its own capital stock, surplus and undivided profits, or (b) when it is unable to meet the demands of its creditors in the usual course of business.—L. '13, p. 128, § 43.

Sec. 360 M. A. S. Surplus Fund Before Dividends.

Before any dividend shall be declared by any bank, it shall first set apart to a surplus fund at least ten per cent of the net profits of the bank for the period covered by the dividend, until such surplus fund shall equal fifty per cent of the capital of the bank.—L. '13, p. 128, § 44.

Sec. 361 M. A. S. Dividends, When Forbidden.

No bank shall pay, nor shall any director thereof authorize the payment of, any dividend except from the net profits of the bank actually collected, nor when the bank is insolvent, nor while the capital or reserve of the bank is impaired.—L. '13, p. 128, § 45.

Sec. 362 M. A. S. Savings Department Kept Separate.

Any person, co-partnership or corporation conducting a savings bank or savings department in connection with other banking or other business, shall keep the books, funds, securities and all other assets of such savings bank or savings department separate and apart, and such assets shall constitute a trust fund for the payment of savings depositors. No department of any bank shall receive deposits from another department, nor borrow from nor loan to the same.—L. '13, p. 128, § 46.

Sec. 363 M. A. S. Corporate Rights.

Except as herein limited, incorporated banks shall exercise and enjoy all the rights and privileges and be subject to all the liabilities provided by law for corporations in general.—L. '13, p. 128, § 47.

Sec. 364 M. A. S. No Branch Banks.

Every bank shall be conducted at a single place of business and no branch thereof shall be maintained elsewhere.—L. '13, p. 128, § 48.

Sec. 365 M. A. S. Deposits by Minors.

Banks may receive deposits directly from minors, and pay the same to their order.—L. '13, p. 128, § 49.

Sec. 366 M. A. S. Publish List of Unclaimed Deposits.

A list of all deposits and the names and last known address or addresses of the depositors thereof remaining with any bank which have remained unchanged (except credits for interest) for a period of ten years or more, or which have for ten years remained unclaimed shall be published in one issue of a newspaper of general circulation published in the city or town where the bank holding such deposit is located. Said list shall be sworn

to by the cashier of the bank making the same, and shall be published at any convenient day during the month of March in each year.—L. '13, p. 129, § 50.

Sec. 367 M. A. S. Voluntary Liquidation — Deposits Long Unclaimed.

Any bank, with the concurrence of the holders of at least two-thirds of its capital stock, expressed at a meeting of its stockholders, may voluntarily liquidate after all its debts have been fully paid or provided for by depositing with the State Bank Commissioner funds to meet the same when presented for payment. A statement disclosing such facts, verified by the president or vice-president and cashier or secretary of such bank, shall be filed with the State Bank Commissioner. If said State Bank Commissioner is satisfied with the truth of such statement he shall issue a certificate cancelling the authority of said bank to do business, and it shall be no longer subject to the provisions of this Act. Any funds deposited with the State Bank Commissioner as herein provided and remaining unclaimed for a period of ten years shall be paid into the treasury of the county in which said bank is located, to be held in trust for such depositors, their heirs, executors, administrators, personal representatives, conservators, successors or assigns.—L. '13, p. 129, § 51.

Sec. 368 M. A. S. Surrender to Bank Commissioner.

Any bank may place its assets and affairs in the possession of the State Bank Commissioner by notifying said State Bank Commissioner and by placing a notice on the front door of its place of business as follows: "This bank is in the hands of the State Bank Commissioner." No business shall be transacted by such bank after such notification and the posting of such notice. The State Bank Commissioner shall immediately take possession and assume control of all the property and assets of such bank.—L. '13, p. 129, § 52.

The above is the Banking Act of 1913 with its few later amendments. It has a curious history. There was but little legislation on the subject before 1907. In that year an Act was passed providing for a Bank Commissioner. (1907, p. 222.) In 1911, at page 172, was passed a full Act of 102 sections, covering both banks and Bank Commissioner.

This 1911 Act said that all its sections should become effective after approval by the Governor except sections 82-98, which were to be submitted to a referendum vote. Fortunately these sections, which made the State a guarantor for all insolvent banks, were killed by the referendum.

The sections which remained substituted the Revised Statutes of 1908, 265-292 [§§ 354-381 M. A. S.] and 315-352 [§§ 317-353 M. A. S.], being the entire banking law except the subdivision relating to Trust, Deposit and Security Companies.

In 1913 (Acts, p. 116), the 1911 Act was substantially re-enacted, excluding the referred sections. It makes no mention of the 1911 Act although it repeals it by implication and the necessity for thus re-enacting the law is not apparent unless it were to avoid the question as to whether part only of an Act could be referred.

State Bank Commissioner.

Section 369 M. A. S. provides for the appointment by the Governor, of a State Bank Commissioner for a four-year term.

Sections 370-375 M. A. S. provide for his deputy, oath of office, bond, office employees and official seals.

Section 376 M. A. S. fixes his office in the Capitol.

Section 377 M. A. S. forbids divulgence of information.

Section 378 M. A. S. calls for biennial examinations.

Sections 379-381d M. A. S. prescribe further duties, fees and reports.

Sections 381e-381s M. A. S. enact the procedure when a bank becomes insolvent or embarrassed or goes into liquidation.

Section 381i especially provides that no receiver shall be appointed nor preference of creditors allowed, nor execution, nor attachment issue after Commissioner takes possession.

Sections 381t-381u M. A. S. fix penalties for violation of this act and section 381v M. A. S. repeals sections 265-292 and 315-352 of the Revised Statutes.

The above is a reprint or analysis of the entire Code Act.

Limitation on Loans.

The above sections 349 and 350 M. A. S. impose limitations on loans to officers and employees, and endorsements by them, seeming to make a distinction between the officers of the bank and its directors. The total indebtedness to stockholders must not exceed forty per cent of the capital and a twenty per cent limitation as to any single creditor is attempted to be imposed.

Insolvent Bank Receiving Deposits.

Sections 356 and 381t M. A. S. make it a felony to receive deposits or to incur a debt when the officer knows the bank to be insolvent. Admitting it to be almost a truism that there can be no such thing as an honest bank failure, yet the fact that a refusal to receive a deposit would necessarily be a confession of insolvency, while there is always hope that a bank may save itself, there is room for indulgence to parties prosecuted under these Acts. Section 356 M. A. S. makes the delinquent officer personally responsible for the amount of such deposit or debt and regulates the practice to enforce such personal liability. Section 381t M. A. S. makes the act a felony and fixes the punishment at twenty years. This extreme term is many years in excess of the limit under former Acts, and the same section fixes the punishment for false statements or reports [§ 338 M. A. S.], embezzlement [339 M. A. S.], bribery [§§ 358; 379 M. A. S.], commissioner or deputies receiving compensation [§ 374 M. A. S.] at the same term of imprisonment. The maximum fine is \$2,000. This grouping section fails to make any distinction between trifling delinquencies and the deliberate attempt to wreck the bank or rob its depositors.

Under the law as it then stood the failure to pay up its stock within the one year made the Charter liable to forfeiture. *Peo. v. City Bank of Leadville*, 7 Colo. 226, 3 Pac. 214. But under Sec. 9, above printed, the certificate of authority does not issue until all the stock has been paid up.

Where the law requires that security be taken by a bank, the failure to demand such security is no defense to the loan. *Union M. Co. v. Bank*, 2 Colo. 248.

Bank Charter.

Whereas, Ethelbert B. Adams, I. E. Brown and A. R. Mahr, all of the city of Telluride, county of San Miguel, State of Colorado, have associated themselves together for the purposes of incorporation under the terms of the Act entitled, "An Act relating to Banks and Bankers," approved March 17, 1913, of the General Assembly of the State of Colorado and its amendments, they do therefore make, sign and acknowledge these triplicate certificates in writing which when filed shall constitute the articles of incorporation of the Placerville Bank.

ARTICLE 1. The name assumed to distinguish such corporation and to be used in all its dealings is *The Placerville Bank*.

ARTICLE 2. The purposes for which such corporation is organized are to carry on the business of banking by discounting on banking principles upon such securities as the directors or trustees shall deem expedient; by receiving deposits; by buying or selling the bonds or stocks of this or any other state, or of the United States; also the bonds of any county, city, town or school district in this State, legally authorized to issue such bonds; gold and silver bullion; foreign coins and bills of exchange; by loaning money on personal security, and by exercising such incidental powers as may be necessary to carry on such corporation, and to do all things incidental to the business of banking allowed by law.

ARTICLE 3. The business of such corporation shall be conducted in the City of Telluride, County of San Miguel, and the principal office of such company shall be in said City of Telluride.

ARTICLE 4. The amount of the capital stock of such corporation shall be fifty thousand dollars, divided into five hundred shares of the par value of one hundred dollars each.

ARTICLE 5. The names and residences of the persons who

have in good faith agreed to subscribe for said corporate stock and the amount agreed to be subscribed by each are the names in the following list and opposite each name is set the amount so agreed to be subscribed by each of said persons, to-wit:

<i>Names.</i>	<i>Residence.</i>	<i>Shares.</i>
Ethelbert B. Adams,	Telluride	100
I. E. Brown,	Telluride	100
A. R. Mahr,	Telluride	100
C. D. Waggoner,	Telluride	100
Benj. F. Lounsbury,	Placerville	100

ARTICLE 6. The period during which such corporation is to exist, that is to say, the term of the corporate life of such bank, shall be twenty years.

ARTICLE 7. The number of directors shall be five and the names and residences of the directors who shall serve until the second Monday of January following the date of this certificate and until their successors are elected and qualified, are the same as named in Article 5 above written.

ARTICLE 8. Cumulative voting at meetings of stockholders shall not be allowed.

ARTICLE 9. The board of directors shall have power to make such prudential by-laws as they may deem proper for the management of the affairs of the bank, not inconsistent with the laws of this State, for the purpose of carrying on all kinds of business within the objects and purpose of such bank.

In Witness Whereof, The said incorporators have hereunto set their hands and seals this first day of September, A. D. 1916.

ETHELBERT B. ADAMS,	(SEAL)
I. E. BROWN,	(SEAL)
A. R. MAHR.	(SEAL)

Acknowledgment as on page 40.

First Meeting of Directors.

The above articles being filed in the office of the County Recorder, the Secretary of State, and with the Commissioner, the directors immediately meet and organize, adopt a set of by-laws, elect the officers of the bank and approve their bonds—but are not allowed to do any business further than to hold this meeting and to receive payment for and issue the stock of the corporation. —Sec. 323 M. A. S.

By-Laws.

As soon as this is done they must file the oaths of officers and a copy of the by-laws adopted, together with the sworn statement set out in Sec. 324 M. A. S.

The Commissioner then issues his Certificate of Authority to conduct a banking business.—Sec. 325 M. A. S.

The proceedings from that time on require no particular corporate action not set forth in the sections above printed.

The time of annual meetings of directors of all State Banks is fixed for one date, at which meeting they elect the new board, any vacancy in the meantime being filled as provided for in the by-laws. Section 329 M. A. S. And within ten days after each annual meeting must file a report as required by Sec. 333 M. A. S.

For failure to comply with this section, or with section 336 M. A. S., which calls for special reports an unconscionable penalty of \$25 per day is imposed, which penalty if, perhaps excusably, neglected, would grow to proportions sufficient to swamp all the profits if not the capital of the bank.

Unincorporated Banks.

The latter part of Sec. 350 M. A. S. limits the loaning capacity of an unincorporated bank. An unincorporated bank is nothing more than an individual or partnership doing a brokerage business under an apparently corporate name calculated to mislead its clientele. The use of the word "Bank" for any other purpose was strictly forbidden by R. S., Sec. 348, but that section is repealed and we find nothing to take its place. But the use of the word "State" is forbidden to private banks.—Sec. 325 M. A. S. Apparently such an unincorporated private bank comes under the general regulations of the Banking Code, but when it has neither officers nor stockholders, it seems difficult to apply many of its provisions to such private banks.

Under Sec. 381e M. A. S., the commission may annul a "Charter" and is authorized at once to seize the assets of an insolvent recalcitrant bank, but it would seem that such seizure of the property of a private bank would be without any process of law.

The whole tenor of the Act is to place the banking business under the personal control of the Commissioner when the bank is incorporated and the members of unincorporated banks, are personally liable as partners.

Stockholders' Liability.

In an action by the receiver of an insolvent bank to charge one as a stockholder therein, questions as to an alleged fraud by which he was induced to purchase the shares, or the right of the seller, are immaterial.—*Bundy v. Wilson*, 66 Colo. 253, 180 Pac. 740.

Those whose names are, to their knowledge, carried upon the stock ledger of a bank, and who assume to exercise the rights of stockholders, are liable for the debts of the institution.—*Id.*

CHAPTER XI.

SAVINGS BANKS.

All the sections of the Revised Statutes relating to Savings Banks were repealed by the Bank Code Act of 1913, p. 116, and their provisions are now to be found scattered among the sections of the Code Act above referred to and printed on page 67.

Such being the case, there is no practical distinction between a Bank and a Savings Bank only the instances where they are specially mentioned in such Code.

Sec. 341 M. A. S. makes the reserve of a savings bank somewhat different from the reserve required of other banks.

In loans on real estate secured by Trust Deed or Mortgage, savings banks are not subject to all the restrictions of common banks in such cases although both kinds are allowed to make such loans.—Sec. 346 M. A. S.

Sec. 347 M. A. S. limits the securities which this class of banks may deal in.

Sec. 348 M. A. S. prescribes for regulations by the Board as to payments to depositors and requires such regulations to be printed on the pass books.

Sec. 362 M. A. S. makes the deposit account a trust fund for the protection of the depositors and any bank having a "savings department" must keep its accounts separate from those of other departments of the bank.

In the case of a savings bank alone it would seem that all its deposits would go to the credit of this trust fund.

Articles of Savings Bank.

Preamble same as in form for State Banks on page 85.

ARTICLE 1. The name of said corporation shall be *The Holyoke Savings Bank*.

ARTICLE 2. The objects for which said corporation is created are to operate and maintain a savings bank to receive on deposit such sums of money as may be offered and to make loans out of such funds and otherwise invest the same as may be allowed by law and to repay such deposits with interest, under rules to be adopted by the board of directors, and to do all things usual and incidental to carrying on the business of a savings bank.

Other articles and acknowledgment same as on pages 39 and 86.

Holders of certificates of deposit, as well as holders of savings account pass books, are "savings depositors" and entitled to preference under Sec. 365 M. A. S.—Tabor

v. Mullin, 37 Colo. 399, 86 Pac. 1007. And for further rulings on this section see Askey v. Fidelity Savings Assn., 37 Colo. 432, 86 Pac. 1025.

But that section was repealed by the Codifying Act and there is no substantial provision replacing it except to the extent that the deposits might be treated as a special fund for the protection of savings depositors.

CHAPTER XII.

TRUST COMPANIES.

Sec. 392 M. A. S. Organization of Trust Company.

That any number of persons, not less than five, may associate together for the purpose of forming a trust company in accordance with the provisions of this act.—R. S. '08, § 303.

Sec. 393 M. A. S. Articles of Incorporation.

The persons so associating shall execute articles of incorporation as provided by section 2 of chapter 19 of the General Statutes of the State.—R. S. '08, § 304.

[The section above referred to is section 473 M. A. S.]

Sec. 394 M. A. S. Powers of Trust Companies.

All trust companies incorporated under the provisions of this Act are hereby authorized—

1. *Fiscal Agents*.—To act as the fiscal or transfer agent of any state, municipality, body politic or corporation, and in such capacity to receive and distribute money and transfer, register and countersign certificates of stock, bonds or other evidences of indebtedness.

2. *Deposits—Interest*.—To receive from any person or corporation or under the order of any court of record deposits of money, securities or other personal property in trust or for investment or for safe-keeping, holding or keeping such money, securities or personal property subject to demand or upon time

receipts or certificates as may be agreed upon, and to hold or accumulate such money, securities or personal property at such rate of interest as may be obtained or agreed upon, and to allow and pay such interest thereon as may be agreed upon not exceeding in either case the rate of six per cent per annum; also to make loans to individuals or corporations and to accept either personal or real security therefor.

3. *Trustee*.—To act as trustee under any mortgage, deed of trust or bond issued by any individual or corporation, and accept and execute any other trust not inconsistent with the laws of the State.

4. *Guardian—Receiver*.—To act under the order of appointment of any court of record as guardian, receiver or trustee of the estate of any minor, the annual income of which is not less than one hundred dollars, and as depository of any money paid into court, whether for the benefit of any such minor or any other person, corporation or party.

5. *Legal Trusts*.—To take, accept and execute any and all such legal trusts, duties and powers, in regard to holding, management and disposition of any estate or property, real or personal, and the rents and profits thereof, or the sale thereof, as may be granted or confided to it by any court of record or by any person, corporation or other authority, whether such estate or property be the estate or property of deceased or living persons, and the said corporation shall be accountable to all parties in interest for the faithful discharge of every such trust, duty or power which it may accept.

6. *Idem*.—To take, accept and execute all such legal trusts and powers of whatever nature or description as may be conferred upon or entrusted, or committed to said company by any person, or any body politic, corporation or other authority by grant, assignment, transfer, devise, bequest or otherwise, or which may be entrusted, committed, transferred to or vested in said company by order of any court of record of this State, and to receive and take and hold any property or estate, real or personal, which may be the subject of any such trust.

7. *Investments*.—To purchase, invest in and sell stocks, bills of exchange, notes, bonds and mortgages and other securities, and when moneys, or securities for moneys, are borrowed or received on deposit or for investment, the receipts, certificates, bonds or obligations of the company may be given therefor, but nothing herein contained shall be construed as giving the right to issue bills intended to circulate as money.

8. *Executor or Administrator.*—To be appointed and to accept the appointment of executor or of trustee under the last will and testament, or administrator with or without the will annexed of the estate of any person, and to be appointed and to act as the conservator or committee of the estate of lunatics, idiots, persons of unsound mind and habitual drunkards.

Whenever application shall be made to any court of this State for letters testamentary on any last will or testament by the laws of which said company is appointed executor thereof, the said court shall grant letters testamentary thereon to said company, and whenever application shall be duly made to any court of the State for letters of administration upon the estate of any deceased person, with or without the will annexed, and it shall appear that there is no person entitled to such letters who is qualified, competent, willing and able to accept such administration, said court may at the request of any party interested in the estate, whether as creditor or beneficiary, grant letters of administration on said estate to said company.

9. *Guardian.*—Said company may be appointed guardian of infants in all cases where an application shall be made to any court of this State having jurisdiction for the appointment of a guardian of any infant, the amount of the income of whose estate shall exceed the sum of one hundred dollars per annum.

The said court shall have power to appoint, on the application of the minor, if of the age of fourteen years or upwards, and on the application of the friends of the minor, if under the age of fourteen years, said company as guardian of the estate of such infant. Every court into which money may be paid by parties or be brought by order or judgment, may by order direct the same to be deposited with said company.

10. *Fidelity Bonds—Safety Vaults.*—That any corporation under this Act shall also possess and have the power to make insurance for the fidelity of persons holding places of responsibility and trust and to receive upon deposit, for safe-keeping, money, plate, stock, bonds and valuable property of every kind upon terms to be described by the laws of such company; *Provided*, That nothing herein shall authorize trust companies to engage in the business of banking except, in event of being expressly authorized except to the extent herein allowed and provided for.

11. *Liberal Construction.*—That all corporations incorporated under this Act may do and perform all acts and exercise all powers connected with, belonging to or necessary for the full and complete exercise and discharge of the rights and powers

and responsibilities hereinbefore granted and all provisions of this Act shall be liberally construed so as to accomplish the purposes and objects hereby proposed.—R. S. '08, § 305.

Sec. 395 M. A. S. Power of Court Over Company Acting as Guardian, Executor, Etc.

The court or judge of any court, whereby the said company shall be appointed guardian, executor or administrator with or without the will annexed, shall have power to make orders respecting such trusts, and to require the said company to render all accounts which said court or judge might lawfully make or require, if such guardian, executor or administrator with or without the will annexed, were a natural person.—R. S. '08, § 306.

Sec. 396 M. A. S. Investment of Trust Funds.

The trustees or board of directors shall have a discretionary power of investing moneys received by them in trust in public stocks or bonds of the United States or of any individual state, or in the bonds or stock of any incorporated city or county of the state duly authorized to be issued, or in such real or personal securities as they may deem proper, but no trust company shall invest in the stock or bonds of any private incorporated company.—R. S. '08, § 307.

Sec. 397 M. A. S. No Loans to Officers.

No loan shall be made by any trust company directly or indirectly to any trustee, director or other officers thereof and no loan shall be made upon stock of the company.—R. S. '08, § 308.

[For Sec. 398 M. A. S. see p. 300.]

Sec. 399 M. A. S. When Acting as Executor, Etc., Governed by Same Laws as an Individual.

In the exercise by said company of the powers herein authorized as guardian, executor, administrator, committee or conservator of lunatics, or of any office or duty imposed by any court, said company shall be subject to the same responsibilities, shall have the same powers and shall receive the same compensation as fixed by law with relation to individuals, holding similar offices or trusts, except as herein otherwise specially provided. The exercise of the other powers and the performance of

the other duties by said company may be as to compensation and otherwise matters of contract with the parties interested.—R. S. '08, § 310.

Sec. 400 M. A. S. Trust Funds and Investments Shall Be Kept Separate.

The said company shall keep all trust funds and investments separate and apart from the assets of the company, and all investments made by said company as fiduciary shall be so designated that the trust to which such investments shall belong shall be clearly known.—R. S. '08, § 311.

State Banks accepting the provisions of the Federal Reserve Bank Act are required to establish a "Separate Trust Department" and keep trust accounts separate.—Secs. 381a¹-381b¹ M. A. S.

Sec. 401d M. A. S. Stock According to Population.

No company shall hereafter be incorporated for any of the purposes enumerated in this act, or possess the rights and franchises hereby granted, unless it shall have paid in capital stock of two hundred and fifty thousand dollars (\$250,000.00) when located in a city or town having a population of one hundred and fifty thousand or more, one hundred thousand dollars (\$100,000.00) when located in a city or town having a population less than one hundred and fifty thousand and more than fifty thousand dollars (\$50,000.00) when located in a city or town having a population less than fifty thousand; and before proceeding to operate under this act a sworn statement signed and sworn to by the president and secretary shall be filed with the secretary of state to the effect that capital has been paid up in cash, and all the provisions of this act complied with, and the same be fully paid in.—L. '13, p. 611, § 5.

Sec. 402 M. A. S. Reports.

Every company organized and doing business in this State under the provisions of this act shall make not less than three nor more than five reports annually to the state treasurer, such reports to be made on demand of the state treasurer; and shall be in the form required by the state treasurer; such report and statement shall be verified under oath by some officer of the company, and shall be published by the company for one week

in each edition of two of the daily papers then published in the city or town where such trust company shall hold its principal office. In the event that only one daily paper shall be published in such city or town, then in one daily paper.—R. S. '08, § 313.

Sec. 403 M. A. S. Old Companies.

All the provisions of this act shall apply to all trust companies as may be already organized and existing within the State of Colorado.—R. S. '08, § 314.

Sections 382-391 M. A. S. provide for the organization of companies to "carry on a trust deposit and security business," but we treat sections 392-397 M. A. S., taken from a later act concerning trust companies, as repealing them by implication, as the provisions of the latter cover the same ground.

Of course a company could be formed to act as a deposit company strictly, or as a security (bonding) company strictly, not intending to perform any other act as a trust company, but even in such case we consider that it would be required to have the full capitalization and comply in all other respects with the Act of 1891, as the word "Trust" seems to be a generic term which covers all these classes of companies.

The above printed section 394 M. A. S. enumerates the powers of such companies which under the word of description "Trust" are granted the powers to receive deposits and to furnish security bonds.

Section 396 M. A. S. apparently purports to limit the class of securities to be dealt in, but really places no such limit except to exclude dealing in stock or bonds of private corporations.

In this connection Art. 5, Sec. 36, Const., says:

"No Act of the General Assembly shall authorize the investment of trust funds by executors, administrators, guardians, or other trustees, in the bonds or stock of any private corporation."

By section 309 R. S. '08 stockholders are personally liable for any corporate shortage, as we read the section,

to the extent of the face value of their stock in addition to the face value already paid to the company upon its issue.

Section 310 R. S. '08 provides that when acting in any office to which judicially appointed they shall receive the same fees as individuals.

All trust and fiduciary funds are to be kept separate from the assets of the company.—Sec. 311 R. S. '08.

R. S. Sec. 313 provides for reports to the State Treasurer. This was probably superseded by the Bank Commissioner Act of 1907. (R. S. Secs. 315-352.) But this Act was substituted by Act of 1913, p. 116 [§§ 317-381w M. A. S.]

And later, by Act of 1913, page 610, the Bank Commissioner was given full authority over trust companies. It also requires a certificate of authority from the commissioner and does not allow the articles to be filed until the entire capital stock has been paid in. It forbids the use of the words "trust" or "trust company" except to corporations organized under the Act and fixes minimum capital stock at \$250,000, \$100,000 and \$50,000, according to the size of the city where located.

Articles of Trust Company.

ARTICLE 1. The name of said Company shall be *The Inter Ocean Trust Company*.

ARTICLE 2. The objects for which such company is created are to act as fiscal agent, depository and trustee; to perform the offices of guardian, receiver, executor, administrator or other administrative appointment requiring the custody or management of funds; to purchase, invest in and exchange all sorts of legal securities; to provide fidelity bonds and maintain safety vaults and in general to exercise all the rights and powers conferred by the terms of section 305, of the Revised Statutes of Colorado, and all such further rights and powers as may hereafter be conferred upon trust companies.

Preamble, other articles and acknowledgment as per form on page 39, but using at least five names as incorporators.

Banks May Become Trust Companies.

By Act of 1915, p. 135 [§ 381y M. A. S.], any bank by proper amendment to its Articles may have all the privileges of a Trust Company in addition to its usual banking powers. Under its terms they must establish a separate trust department and keep separate books and accounts. Such banks so electing to come under the Act remain under the authority of the Bank Commissioner.

Sec. 381D¹ M. A. S. Jurisdiction of Bank Commissioner.

The State Bank Commissioner shall have and exercise in relation to every such state bank accepting the benefits of this act each and all of the powers possessed by him in regard to trust companies, in addition to such powers as are now possessed by him in regard to banks.—L. '15, p. 137, § 6.

Sec. 381E¹ M. A. S. National Banks Acting as Trust Companies.

Every national bank, now or hereafter carrying on business in this state, when authorized by special permit granted by the Federal Reserve Board, in conformity with the provisions of an Act of Congress approved December 23, 1913, and known as the "Federal Reserve Act," shall possess, enjoy and exercise the following rights, privileges and powers and be authorized to act in the capacities of trustee, executor, administrator and registrar of stocks and bonds, and in such other fiduciary or trust capacities as may now or hereafter be permitted by the laws of the United States or by the rules or regulation of said Federal Reserve Board.—L. '15, p. 137, § 7.

The Act of Congress allowing National Banks to act as Trustee or Executor construed and upheld, reversing the State Court Decision—First National Bank v. Fellows, 244 U. S. 416, 37 S. C. R. 724.

Trusts.

Unlawful combinations and monopolies, commonly called trusts, are defined by Act of 1913, p. 613 [§ 7609a

M. A. S.], and corporations violating the Act are to be proceeded against by *quo warranto*. This statute is mainly declaratory of the common law.

It contains the now common clause compelling parties to give evidence against themselves in direct violation of the Bill of Rights, with the added provision that the party so incriminating himself shall not be prosecuted, which promise the State has no right to make and can always find means to evade.

CHAPTER XIII.

SURETY COMPANIES.

Sec. 3606h M. A. S. Requirements.

May Execute Surety Bonds.

(1) Whenever any bond, undertaking, recognizance or other obligation is by law, or the charter, ordinance, rules or regulations of any municipality, board, body, organization, court, judge or public officer required or permitted to be made, given, tendered or filed with surety or sureties, and whenever the performance of any act, duty, contract or obligation, or the refraining from any act, is required or permitted to be guaranteed, such bond, undertaking, obligation, recognizance or guaranty may be executed as surety by a company qualified as herein provided;

Statutory Requirements—Judicial Notice.

And such execution by such company of such bond, undertaking, obligation, recognizance or guaranty shall be in all respects a full and complete compliance with every requirement of every law, charter, ordinance, rule or regulation, that such bond, undertaking, obligation, recognizance or guaranty shall be executed by one or more sureties; or that sureties shall be residents or householders or freeholders, or either, or both, or possess any other qualifications; and all courts, judges, heads of departments, boards, bodies, municipalities and public off-

cers of every character shall accept and treat such bond, undertaking, obligation, recognizance or guaranty, when so executed by such company, as conforming to and fully and completely complying with every such requirement of every such law, charter, ordinance, rule or regulation.

May Be Required to Justify.

Provided, however, That such company may be required to justify in such terms and for such amounts as may be satisfactory to the court, person or body authorized to approve such surety.

Notice of Withdrawal—New Bond.

(2) *Surety Released—File Other Security.* Any surety upon the bond of any State, county, municipal, judicial district, irrigation district or court officer shall be released from further liability as such surety for such officer, by filing with the person or persons having authority to approve said bond, or with whom said bond is directed to be filed, a notice that said surety is unwilling longer to be surety for such officer. When any notice shall be filed as aforesaid, written notice thereof shall immediately be given to such officer, who shall thereupon file other security to be approved as provided by law. If said officer shall not within ten days from the service of such notice upon him, file such bond to be approved as aforesaid, the said office shall become vacant, and the said vacancy shall be filled in the manner provided by law. If a new bond shall be given by any officer, as hereinbefore provided, then the former surety or sureties shall be entirely released and discharged upon all liability incurred by such officer from and after the time of giving of such notice as aforesaid and the sureties to the new bond shall be liable therefor as therein provided.

Notice to Beneficiary.

(3) *Surety File Application for Release—Refund.* When any company, surety upon the official bond of any trustee, committee, conservator, guardian, assignee, receiver, executor, administrator or other fiduciary in this State shall desire to be released from such obligation, such surety shall file its application for such release in the court having jurisdiction of such under the seal thereof, a notice to such fiduciary, requiring him fiduciary; and thereupon the clerk of such court shall issue,

or her to furnish a new bond, with sureties to be approved by the court, within ten days from the date of the service of said notice. Such notice may be served in the manner provided by law for the service of a summons in civil action. If such fiduciary shall fail to furnish such bond within the time hereinbefore prescribed, he or she shall be summarily removed from office, and a new trustee, committee, conservator, guardian, assignee, receiver, executor, administrator or other fiduciary forthwith appointed. From and after the time when such new bond is furnished and approved, or such new fiduciary appointed and qualified, the surety making such application shall be released from all liability upon its said bond, except for such default or other misconduct on the part of such fiduciary as occurred prior thereto.

Refund of Unearned Premiums.

It is further provided that in case of the release or withdrawal of any surety as provided in this act, if the principal shall account in due form of law for all of his acts and doings, and all trust funds or estate in his hands and secured by such bond, and such account shall be approved so that there is no further liability of such surety upon such bond, then the unearned portion of any premium paid to such surety shall be refunded and repaid by the said surety.

Safety Vaults.

(4) *Place of Deposit—Proviso.* It shall be lawful for any party of whom a bond, undertaking or other obligation is required to agree with his surety or sureties for the deposit of any or all moneys and assets for which such surety or sureties are or may be held responsible, with a bank, savings bank, safe deposit or trust company, authorized by law to do business as such, or other depository approved by the court, or a judge thereof, if such deposit is otherwise proper, for the safe keeping thereof, and in such manner as to prevent the withdrawal of such moneys and assets or any part thereof, without the written consent of such surety or sureties, or an order of the court, or judge thereof, made on such notice to such surety or sureties as such court or judge may direct; provided, however, that such agreement shall not in any manner release or change the liability of the principle or sureties as established by the terms of the said bond.

Premiums Taxed As Costs.

(5) *Bond—Part of Expense.* Any receiver, assignee, guardian, trustee, committee, executor, administrator, curator or other fiduciary required by law or the order of any court or judge to give a bond or other obligation as such, may include as a part of the lawful expense of executing his trust, such reasonable sum paid a company or companies authorized under the laws of this state so to do for becoming his surety on such bond, as may be allowed by the court in which, or the judge before whom, he is required to account, not exceeding the one per centum per annum on the amount of such bond or other obligation; and a party or parties to any action, suit or proceeding, entitled to recover costs in such action, suit or proceeding, shall be allowed, and may have taxed, and may recover, as costs therein, such sum or sums as said party or parties shall have paid such a company or companies as premium or premiums for executing any bond, recognizance, undertaking, stipulation or other obligation therein, not exceeding five dollars per annum for each thousand dollars or fraction thereof of the penalty of such bond, recognizance, undertaking, stipulation or other obligation for each year or part thereof that the same has been in force; and such premium or premiums so paid shall be taxed by the clerk of the court in which such action, suit or proceeding is pending, as costs therein, upon production to him of proper receipt or receipts for the payment of such premium or premiums, which receipt or receipts shall be by him filed with the papers in the cause.—L. '13, p. 377, § 82.

Sections 923-940 of the Revised Statutes were repealed by the codified Insurance Act of 1913, and the single section 3606h M. A. S. of the Codified Act above printed takes their place.

The only other mention of this subject in the Act is in Sec. 3557 M. A. S., which says that the minimum capital must be \$250,000 and that it must have a heavy deposit for the protection of its clients, and in Sec. 3561 M. A. S., where it refers to suretyship as one of the subdivisions of insurance.

The form of the Articles is practically the same as for any business corporation, the statute not requiring anything more specific than the general statement of the

objects, as given in the third paragraph of Sec. 3561 M. A. S. of the Insurance Code, above cited, to-wit:

7. To engage in the business of suretyship and guarantying the fidelity of persons holding places of trust, public or private.

Articles of Surety Company.

WHEREAS, James H. Doran, W. S. Rose and George B. Croft, all of the County of Ouray, State of Colorado, have associated themselves together for purposes of incorporation under the General Incorporation Laws of Colorado and the Special Acts, concerning surety companies, they do therefore make, sign and acknowledge this triplicate certificate in writing which, when filed, shall constitute the Articles of Incorporation of the Ouray Surety Company.

ARTICLE 1. The name of said Company shall be *The Ouray Surety Company*.

ARTICLE 2. The objects for which said Company is created are to engage in the business of suretyship and guarantying the fidelity of persons holding places of trust, public or private, and to exercise all the rights and powers conferred on surety companies by the terms of the Codified Insurance Act, approved April 15, A. D. 1913, and the amendments thereto, and all such other rights and powers as may be hereafter conferred upon such companies.

Other articles and acknowledgment same as on page 39.

A copy of these articles must first be submitted to the Attorney General (Sec. 3562 M. A. S.) for his approval. This copy is returned to the office of the Commissioner which then authorizes the opening of books for subscription of stock.

A report must later be made after the deposit required by the Act has been made and a certificate is delivered to the company for record, on forms furnished by the office.

Although scarcely mentioned in the Codifying Act, except as above noted, surety companies are constantly classed as insurance companies and come under the jurisdiction of the Commissioner of Insurance.

CHAPTER XIV.

TITLE GUARANTY COMPANIES.

Sec. 1081 M. A. S. Purpose of Incorporation.

That any number of persons, not less than three, may associate together under this Act for the purpose of engaging in and carrying on the business of the insurance of owners of real estate, mortgages, and others interested in real estate, from loss by reason of defective titles, liens and encumbrances, and of the insurance of loans of every and all kind, in such manner and on such terms as may be agreed on between them and the parties contracting with them, with power herein conferred.—R. S. '08, § 941.

Sec. 1082 M. A. S. \$100,000 Capital Must All Be Paid In—Share, \$100.

The amount of capital stock in any such corporation shall be fixed and limited by the association in their articles of association, and shall not be less than one hundred thousand dollars, and shall be divided into shares of one hundred dollars each. When all of said stock shall have been subscribed for, and the whole amount actually paid in, in cash, any such association may organize and proceed to business under this Act.—R. S. '08, § 942.

Sec. 1083 M. A. S. Contents of Articles of Incorporation.

The persons so associating shall subscribe articles of association, which shall contain:

First.—The name by which the association shall be known.

Second.—The object for which said association is created.

Third.—The period for which said association is to be incorporated.

Fourth.—The amount of capital stock of said association.

Fifth.—The number of directors who shall manage the affairs of the association during its existence.

Sixth.—The place where its principal office for the transaction of business is to be established.

Seventh.—Within what territory the association will carry on business.

Eighth.—What officers of said association shall have complete charge of the affairs of said association.—R. S. '08, § 943.

Sec. 1084 M. A. S. Articles, Where Filed.

The articles of association required by the last preceding section shall be recorded in the office of the Secretary of State, and a copy filed in the office of the recorder of deeds of the county where the transactions of the business of such association are to be established.—R. S. '08, § 944.

The wording of the above sections seems to demand only one set of articles, which is recorded with the Secretary of State, and a certified copy goes to the county recorder. But a duplicate original would be its equivalent.

Sec. 1085 M. A. S. First Meeting—Notice.

When any such association shall be formed under this Act, any two of those associated may call the first meeting of the association, at such time and place as they may appoint, by giving proper notice thereof at least ten days before the time appointed for such meeting.—R. S. '08, § 945.

Sec. 1086 M. A. S. Directors and Officers.

The stock, property and affairs of such association shall be managed by not less than three directors, to be elected as the by-laws of such association shall determine, and to hold their office for the period of one year, and until their successors shall be duly chosen. Said directors shall choose one of their number president, and they must elect or appoint such other officers or agents as they may deem expedient.—R. S. '08, § 946.

Sec. 1087 M. A. S. Enumeration of Powers.

That all associations incorporated under the provisions of this Act, for the insurance of owners of real estate, mortgages, and others interested in real estate, from loss by reason of defective titles, liens and incumbrances, and for the insurance of

loans of every and all kind, in such a manner and upon such terms as may be agreed on between them, and the parties contracting with them, whose capital stock shall not be less than one hundred thousand dollars, be and are hereby authorized:

1. *Insurance of Titles.*—To make insurance of every kind pertaining to, or connected with the titles to real estate, and shall have the power and right to make, execute and perfect such, and so many contracts, agreements, policies, and other instruments as may be required therefor, for compensation or otherwise.

2. *Abstract Books.*—To acquire by purchase or otherwise, and to own, manage and maintain sets of abstract books, showing abstracts of title to real property in the County of Arapahoe and State of Colorado, or elsewhere, and to dispose of the same at pleasure.

3. *Guaranty of Titles.*—To furnish good and sufficient guarantees as to title to real estate, which guarantees may be for compensation by percentage or otherwise, and shall be under seal or otherwise, and in such amounts as may be required.

4. *Negotiate Loans.*—To negotiate loans for said association, or for other parties, and to furnish for compensation by percentage or otherwise, good and sufficient guarantees under seal or otherwise, as to the quality and security of such loan.

5. *Buy, Sell and Pledge Realty and Personalty.*—To acquire by purchase or otherwise, and to hold, sell, mortgage, or otherwise dispose of, real estate and personal property, either within or without the State of Colorado, for said association, or for other persons and associations, and to loan or borrow money upon such real estate or personal property.

6. *Bonds and Loans.*—To acquire by purchase or otherwise, and to hold or sell bonds, warrants and all classes of securities, and to borrow or loan money upon the same.

7. *Discounts.*—To borrow money either with or without giving security therefor, and to loan money, either with or without taking security therefor, and to purchase or discount promissory notes and other evidence of indebtedness.

8. *Agent.*—To act as agents for the collection of rents and incomes from any source, for any person or corporation.—R. S. '08, § 947.

Sec. 1088 M. A. S. Liability of Officers and Stockholders.

The officers and stockholders of any such association formed under this Act, shall be individually liable for all debts or obli-

gations contracted during the time of their being officers or stockholders of such association, equally ratable in an amount equal to their respective shares of stock in any such association.—R. S. '08, § 948.

Articles of Title Guaranty Company.

Preamble as on page 102, the surety company form.

ARTICLE 1. The name of said company shall be *The Trinidad Title Guaranty Company*.

ARTICLE 2. The objects for which said association or company is created are to carry on the business of insurance of titles and loans; to keep books of abstracts of titles and to exercise all the rights and powers conferred on such companies or associations by the terms of sections 941 and 947 of the Revised Statutes of the State of Colorado and such other rights and powers as may be hereafter conferred upon such companies.

ARTICLE 3. The period for which said association is incorporated is twenty years.

ARTICLE 4. The amount of the capital stock of said association is \$100,000, divided into 1,000 shares of \$100 each.

ARTICLE 5. The number of directors who shall manage the affairs of the association during its existence shall be three.

ARTICLE 6. The place where its principal office for the transaction of business is to be established is the city of Trinidad, county of Las Animas, State of Colorado.

ARTICLE 7. The company will carry on business in said county of Las Animas.

ARTICLE 8. The officers of said company, who shall have complete charge of the affairs of said company, shall be its board of directors, who shall select from their own number a president, vice-president and secretary, and the names of those directors who shall manage its affairs for the first year are Daniel W. Stone, Frederic W. Clark and A. W. McHendrie.

ARTICLE 9. The board of directors shall have power to make such prudential by-laws as they may deem proper for the management of the affairs of the company, not inconsistent with the laws of this State, for the purpose of carrying on all kinds of business within the objects and purposes of such company.

ARTICLE 10. Cumulative voting at meetings of stockholders shall not be allowed.

Attesting clause and acknowledgment as on page 40.

CHAPTER XV.

TOLL ROAD COMPANIES.

Sec. 1089 M. A. S. Requirements of Articles — Route and Terminals—Toll Gates.

When any three or more persons shall associate to form a company for the purpose of constructing a wagon road under the provisions of this Act, their certificate of incorporation, in addition to the matters hereinbefore required to be stated therein, shall specify the termini of said road and the route of the same, as near as may be; and the said company shall have the right of way over the line named in the certificate, to erect toll gates, not to exceed one in every ten miles of road, and to collect toll for such gate, either thereat, or by a traveling toll gatherer, at the rates prescribed by the county commissioners of the county in which said road is located, upon the application of such corporation.

County Commissioners Fix Tolls.

Provided, That whenever such corporation shall have constructed and completed one mile or more of roads by such corporation to be constructed, it shall be lawful for the county commissioners of the county in which the portion of the road so constructed shall lie, to prescribe the rates of toll to be charged and collected by such corporation upon each mile of that portion of the road so constructed, and, as other portions of the road to be constructed by such corporation shall be completed, the rates of toll shall be prescribed in manner aforesaid, and such corporations shall have power to collect tolls at the rates prescribed until such road be completed.

Tolls in Force for Two Years.

When said road shall have been fully completed, the county commissioners of the county in which the same shall be located shall prescribe the rates of toll such corporation shall be en-

titled to charge and collect, and such rates of toll shall remain in force and be collected from persons traveling such road for two years, from the time of completing such road, and thereafter, at the expiration of every two years, the county commissioners in each county through which said road passes may fix and regulate such rates of toll.

Appeal to County Court.

Provided, however, That if said toll or wagon road company, or any twenty-five citizens of the county, shall be dissatisfied with the rates of toll fixed by the county commissioners, or tribunal transacting county business, said company, or the owners of said toll or wagon road, or said twenty-five citizens, may appeal to the County Court for the county or counties, or either of them, in which said road shall be located, and the said court shall forthwith appoint three disinterested persons as a committee to view the premises, hear such testimony as may be offered, and prescribe the rates of toll to be charged and collected on such road, for the two years next ensuing, and such committee, on oath, shall report the same to the County Court aforesaid, at its first session thereafter, and, if their report shall be accepted by the court, the court shall render judgment thereon, and the rates of toll shall be such as reported and accepted by said court, and in case any toll road company shall take an appeal from the decision of the county commissioners, the expense of such appeal shall be paid by the said toll road company.

Cannot Locate Over Old Road—Posting Toll Rates.

And, provided, further, That nothing in this act shall be so construed as to authorize any corporation, formed under the provisions of this Act, to locate their road, railroad, ditch or flume, or any part thereof, upon any toll road previously existing, nor upon any public highway heretofore, and at the time of the organization of such corporation, used and traveled as such, except it may be necessary to cross such toll road, or public highway; all such rates of toll shall be conspicuously posted at every gate upon said road. Nothing in this Act shall be so construed to prevent the erection of a toll gate and check gate on each branch toll road of any toll road company in this State.—R. S. '08, § 1002.

Sec. 1090 M. A. S. Proceedings When Road Not Kept in Repair.

No company formed under this Act shall demand and receive toll whenever said wagon road is not in reasonably good repair, which fact is to be determined as herein provided. Any person having paid toll on said road, and shall find the same in bad condition and unsafe to travel with loaded teams, shall have the right to make complaint before any justice of the peace in the county in which the road is located, and it shall be the duty of said justice of the peace to summon the said company, or any agent of said company, to appear before him in answer to said complaint, within five days from the date of said complaint, and if it be found that said road is in bad condition or unsafe to travel it shall be the duty of said justice to impose a fine of not less than ten nor more than twenty-five dollars, to be collected from said company, one-half to be paid to the complainant and the other half to be paid into the school fund of the county in which the fine is collected, and said justice shall issue his order that no toll be collected upon said road or upon any part thereof until it is put in good repair.—R. S. '08, § 1004.

Sec. 1091 M. A. S. Work to Begin Within Ninety Days—\$500 Expenditures.

Any corporation, organized under this Act, for the construction of a toll road, shall, within ninety days after its organization, commence work on said proposed road, and continue said work from day to day until at least five hundred dollars shall have been expended on such road, and in case of a failure to perform such work such corporation shall forfeit its right acquired under their certificate of incorporation.—R. S. '08, § 1003.

The constitutionality of the latter part of section 1090 M. A. S. above printed, attempting to give injunctive powers to a justice of the peace, may well be doubted.

The above are all the sections printed in the corporation chapter which relate exclusively to toll roads, but in chapter 159 M. A. S., entitled "Toll Roads," are further provisions as to proceedings when complaint is made that the road is out of repair, with penal clauses both for refusing to pay toll and for collecting unlawful tolls.

The maximum grade of the road must not exceed fifteen feet to the hundred. The minimum width must be ten feet, and there must be turnouts within sight of each other and not more than a quarter of a mile apart, not less than sixteen feet wide and fifty feet long.—Sec. 7163 M. A. S.

Upon completion of the road the county surveyor, at the expense of the company, examines the road and reports to the county commissioners that the terms of the preceding paragraph have been complied with.—Sec. 7164 M. A. S.

The company is given a lien for tolls on animals and vehicles, excepting estrays, stolen property and government teams.—Sec. 7165 M. A. S.

Under section 7166 M. A. S. toll collectors may be appointed constables.

The neglect of the county commissioners to keep a record of its action fixing the rates of toll cannot prejudice the right of the company to collect them.—*Georgetown Co. v. Hutchinson*, 4 Colo. 50.

A toll road is a public highway, and upon expiration of the company's term of corporate life it becomes a free public highway. It cannot renew its corporate life, nor can a new company be formed to take over its franchises. The assignability of the franchise to collect tolls is considered in this case.—*Virginia Canon Co. v. People*, 22 Colo. 429, 45 Pac. 398.

The right of way does not become vested until the line of road is located; it does not relate back to the date of filing of the articles.—*Riddell v. Animas Canon Co.*, 5 Colo. 230.

Where a toll road company had located a large part of its road over an old road bed, which had once been used by another company and later kept in repair by citizens, its franchises were held property forfeited by decree of *quo warranto*.—*Lyons Co. v. People*, 29 Colo. 434, 68 Pac. 275.

Articles of Toll Road Company.

ARTICLE 1. The name of said company shall be *The Meeker and Rangely Toll Road Company*.

ARTICLE 2. The objects for which said company is created are to construct and maintain a wagon road from the town of Meeker to the village of Rangely, all in the county of Rio Blanco, state of Colorado, and to collect tolls upon the same.

The route of said road is by water grade as near as may be down the White River, crossing through the stations known as White River and Angora, a total length of sixty miles.

If the road has been surveyed, instead of the above general description, insert the field notes.

Preamble, other articles and acknowledgment same as on page 39.

The Highway Law, Chapter 140 M. A. S., makes no specific mention of Toll Roads and the charters of most toll road companies have expired by limitation.

CHAPTER XVI.

TELEGRAPH AND TELEPHONE COMPANIES.

Sec. 13. Telegraph Lines—Consolidation.

Any association or corporation, or the lessees or managers thereof, organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph within this state, and to connect the same with other lines, and the General Assembly shall, by general law, of uniform operation, provide reasonable regulations to give full effect to this section. No telegraph company shall consolidate with, or hold a controlling interest in, the stock or bonds of any other telegraph company owning or having the control of a competing line, or acquire, by purchase or otherwise, any other competing line of telegraph.—Const., Art. XV.

Sec. 1118 M. A. S. Additional Statements in Certificate—Right of Way.

Whenever any number of persons organize under the provisions of this Act to form a company for the purpose of constructing a line of magnetic telegraph in this State, their or his certificate shall specify as follows: The termini of such line or lines, and the counties through which they shall pass; and such company is hereby authorized to construct said telegraph line or lines from point to point along and upon any of the public roads, by the erection of the necessary fixtures, including posts, piers and abutments necessary for the wires; *Provided*, That the same shall not incommode the public in the use of said roads or highways.—R. S. '08, § 984.

Sec. 1119 M. A. S. Consent of Owner to Erect Poles, Etc.—Recording—City Council Direct.

No such company shall have the right to erect any poles, posts, piers, abutments, wires or other fixtures of their lines along or upon any street, alley or other highway or public ground, within any incorporated city or town, without the consent of the corporate authorities of such city or town. The consent herein required must be in writing and shall be recorded in the recorder's office of the county in which the city or town is located. Any such city council or board of trustees of such city or town, as the case may be, shall have power to direct any alteration in the location or erection of any such poles, posts, piers or abutments, and also in the height of the wires, having first given the company or its agent opportunity to be heard in regard to such alteration.—R. S. '08, § 985.

Sec. 1120 M. A. S. Refusal or Neglect to Send Message—Penalty.

If any company owning or operating any line of telegraph in this State, shall refuse to receive any dispatch from any other company or person owning or operating any telegraph line in this state, or shall refuse or wilfully neglect to transmit the same in good faith, and without partiality, the company so offending shall forfeit all rights and franchises acquired under the laws of this State, and may be enjoined therefrom by bill of complaint filed in any court of competent jurisdiction, and be liable to pay all damages which shall accrue by reason of such refusal, to the company or person offering such dispatch for transmission.—R. S. '08, § 986.

[Operator not to divulge message, section 2003 M. A. S.]

[Penalty for sending false message or opening message, sections 2004 and 2005 M. A. S.]

**Sec. 1121 M. A. S. Messages Sent in Order Received—
Penalty for Failure.**

It shall be the duty of all persons employed in transmitting messages by telegraph, to transmit them in the order in which they are received, and any person who shall fail so to transmit a message, or who shall suppress a message, or who shall make known the contents of a message to any person other than the one to whom it is addressed, or his agent, shall be deemed guilty of a misdemeanor, and be punished by a fine not exceeding five hundred dollars, and said company shall be liable for all damages resulting therefrom.—R. S. '08, § 987.

Sec. 2652 M. A. S. Use of Public Highways by Companies.

Any telegraph, telephone, electric light or power or pipe line company chartered or incorporated under the laws of this State, shall have the right to construct, maintain and operate lines of telegraph, telephone, electric light, wire or power or pipe line along, across, upon and under any public highway in this State, subject however to the provisions of this Act, but such lines of telegraph, telephone, electric light, wire, power or pipe line shall be so constructed and maintained as not to obstruct or hinder the usual travel on such highway.—R. S. '08, § 2451.

There is no statutory requirement of any items in the articles of a telegraph company other than those used by a business corporation except the slight exactions of the above printed section. There are no statutory requirements at all specially referring to the articles of telephone companies, but of course the articles stating the "objects" of the company would give the proposed route and terminals.

Sections 1119 and 2659 M. A. S. require municipal consent where the line passes through a town or city.

By section 1093 M. A. S. telegraph companies are required to commence work within ninety days and finish the proposed line within two years.

Both companies are granted the right of way over public lands and public highways.—Secs. 2652 and 2653 M. A. S. They may contract for right of way (Sec. 2654 M. A. S.) and if refused may condemn.—Sec. 2656 M. A. S.

No telegraph company is allowed to refuse to forward a dispatch from another company under penalty of loss of its corporate rights.—Sec. 1120 M. A. S. And the company is bound to send all messages in order as received.—Sec. 1121 M. A. S.

Telegraph companies may make reasonable regulations concerning their business, but cannot by such rules relieve themselves from responsibility for negligence. And the rule requiring messages to be repeated has no application to a suit for delay in delivering a message.—West. U. T. Co. v. Graham, 1 Colo. 230.

Articles of Telegraph Company.

ARTICLE 1. The name of said company shall be *The Loco and Burlington Telegraph Company*.

ARTICLE 2. The objects for which said company is created are to construct and maintain a line of magnetic telegraph from the village of Loco to the town of Burlington, all in the county of Kit Carson, State of Colorado.

Preamble, other articles, attesting clause and acknowledgment same as on page 39.

The articles for a telephone company are so obviously similar that no separate form is necessary.

CHAPTER XVII.

GAS COMPANIES.

Sec. 1122 M. A. S. May Organize to Supply Town With Light—Franchise to Lay Pipe.

Any three or more persons may associate under the provisions of this Act for the purpose of forming a company for the purpose of manufacturing illuminating gas for the supply of the inhabitants of any incorporated city or town, and lighting the streets thereof; the mayor and council of such incorporated

city or town are hereby empowered to authorize such incorporated company to excavate so much of the streets thereof as may be necessary to lay down street pipes for conducting illuminating gas as well as for the repairs of said street pipes from time to time, under such regulations as the said mayor and council may deem adequate or proper.—R. S. '08, § 1010.

Sec. 1123 M. A. S. May Lease or Purchase Coal Lands —Sell Coke—Coal.

It shall be lawful for any corporation whose objects shall be to supply illuminating gas to any city or town, or the inhabitants thereof, to lease, purchase, hold and convey such coal lands within this State, as said corporation may deem necessary for the purpose of supplying their works with coal for the manufacture of aforesaid, and said corporation shall also have power and is hereby authorized to sell coal known as coke, or the coal from which the illuminating gas shall have been extracted, as well as other coal from the mines owned by said company.—R. S. '08, § 1011.

Sec. 1124 M. A. S. Term of Existence.

The term of existence of every corporation authorized to be created for the purpose of manufacturing illuminating gas shall not exceed thirty years.—R. S. '08, § 1012.

Nothing is required to be stated in the articles of a gas company different from or additional to what is required of all business corporations other than the statement in article 2 in the form below, and it will be noted that their term of existence is thirty instead of twenty years.

Articles of Gas Company.

ARTICLE 1. The name of said company shall be *The Empire Gas Company*.

ARTICLE 2. The objects for which said company is formed are to manufacture illuminating gas for the supply of the inhabitants of the town of Empire in the county of Clear Creek, in said State, and lighting the streets thereof.

And to lease, purchase, hold and convey coal lands to supply the works with coal for the manufacture of gas and to sell

coal and coke, and to exercise all the corporate rights and powers allowed to gas companies under the terms of sections 1122 and 1123 Mills Annotated Statutes of Colorado.

ARTICLE 3. The term of existence of said company shall be thirty years.

Preamble, other articles and acknowledgment as on page 39.

CHAPTER XVIII.

RAILROADS.

Sec. 6054 M. A. S. Contents of Certificate of Incorporation.

Any number of persons, not less than five, may associate, under the provisions of this Act, to form a company for the purpose of constructing and operating a railroad. Their certificate of incorporation shall, in addition to the matter required in the second section of this Act, specify as follows:

1. The places from and to which it is intended to construct the proposed railway.
2. The time of the commencement and the period of the continuance of such proposed corporation.
3. The names and places of residence of the several persons forming the association for incorporation.
4. In what officers or persons the government of the proposed corporation and the management of its affairs shall be vested.—R. S. '08, § 5410.

Sec. 6056 M. A. S. Corporate Powers of Railway Company.

Every such corporation, formed under this Act, shall, in addition to the powers hereinbefore conferred, have power:

1. To lay out its road, not exceeding two hundred feet in width, and to construct the same; and for the purpose of cuttings and embankments to take as much more land as may be necessary for the proper construction and security of the rail-

way; and to cut down any standing trees that may be in danger of falling or obstructing the railway, making proper compensation therefor.

2. To cross, intersect or connect its railway with any other railway.

3. To connect at the State line with railroads of other states and territories.

4. To receive and convey persons and property on its railway.

5. To erect and maintain all necessary and convenient buildings and stations, fixtures and machinery, for the convenience, accommodation and use of passengers, freights and business interests, or which may be necessary for the construction or operation of said railway.

6. To regulate the time and manner in which passengers and property shall be transported, and the compensation to be paid therefor.

7. From time to time borrow such sums of money as may be necessary for completing, finishing, improving or operating any such railway, and to issue and dispose of its bonds, for any amount so borrowed, and to mortgage its corporate property, and franchise to secure the payment of any debt contracted by such corporation, for the purposes aforesaid, in such manner as the shareholders representing a majority of the stock of any such corporation may direct.—R. S. '08, § 5411.

Sec. 6057 M. A. S. May Guarantee Bonds and Interest.

It shall be lawful for any railroad company now, or hereafter organized, or existing, or doing business in the State of Colorado, under and by virtue of the laws of the State of Colorado, upon good consideration, to guarantee the payment of any mortgage, mortgage bonds, or interest coupons, of any other railroad connecting with said first named railroad. It shall likewise be lawful for any such railroad, upon good consideration, as aforesaid, to guarantee to said road the payment of interest upon its capital stock.—R. S. '08, § 5412.

Sec. 6058 M. A. S. Construction Commenced Within Two Years.

If any railway corporation organized under this Act shall not, within two years after its articles of association shall be filed and recorded, as provided in the second section of this Act, begin the construction of its road, and expend thereon twenty

per cent of the amount of its capital within five years after the date of its organization, its corporate existence and power shall cease; *Provided*, That any such railway corporation may at any time reduce its capital stock in manner and form as provided by the laws of this State, and if twenty per cent of the amount of its capital, as so reduced, shall have at any time been expended in good faith in the construction of its road, then its corporate existence and power shall not cease or be deemed to have ceased.—R. S. '08, § 5413.

[Section 2 above referred to is section 980 M. A. S.]

[Failure to construct electric road on county road forfeits right of way.—Sec. 6083 M. A. S.]

Sec. 6059 M. A. S. Directors—Election.

At any meeting of the stockholders of any railroad corporation heretofore or hereafter formed under the laws of the territory of Colorado, or of this state, for the election of directors, managers or trustees, the stockholders may classify the directors in three equal classes, as near as may be, one of which classes shall hold their office for one year, one for two years, and one for three years, and until their successors are respectively elected, and at all subsequent elections, in the event such classification shall be made, directors shall be elected for three years to fill the places made vacant by the class whose term of office shall expire at that time.—R. S. '08, § 5414.

Sec. 6060 M. A. S. Majority of Stock Fix Interest and Loans.

At all general meetings of the stockholders, those holding a majority in the value of the stock of any such corporation may fix the rates of interest which shall be paid by the corporation for loans for the construction of such railway, and its appendages, and the amount of such loans.—R. S. '08, § 5415.

Sec. 6062 M. A. S. Stockholders' Meeting Necessary to Effect Lease or Purchase.

No such lease or purchase shall be perfected until a meeting of the stockholders of the companies has been called for that purpose on thirty days' notice to each stockholder, and in such manner as is provided for the annual stockholders' meetings, and the holders of at least two-thirds of the stock of each company in person or by proxy, at such meeting, assent thereto.—R. S. '08, § 5417.

Sec. 6063 M. A. S. Railroads May Purchase or Lease Connecting Line—Sale of Road.

Any railroad company owning or operating a line of railroad in this State may purchase other lines of railroad within or without this State which shall connect with the road operated by such company, directly, or by means of any other line which such company shall have the right by contract or otherwise, when constructed, to use or operate and may acquire and may hold, the obligations and stock of other companies owning or operating any such line of road which such company is so authorized to purchase or which under the laws of this state, it is authorized to lease, or with which under said laws it may be authorized to consolidate, and any corporation existing under the laws of this State may sell its line of railroad to any other company to which, under the laws of this State, it may lease the same or with which it may consolidate;

Provided, That no line of railroad shall be so purchased until a meeting of the stockholders of such company or companies of this State, party or parties to such an agreement whereby a railroad in this State may be purchased, has been called for that purpose in such manner as provided for the annual stockholders' meeting, and the holders of at least two-thirds of the stock of such company consent thereto; *Provided*, This shall not authorize the purchase or sale of competing or parallel lines.—R. S. '08, § 5418.

[For call of stockholders' meeting, see section 997 M. A. S.]

Sec. 6065 M. A. S. Term of Existence—Renewal.

No such corporation shall be formed to continue more than fifty years, in the first instance, but such corporation may be renewed from time to time, in such manner as may be provided by law, for periods not longer than fifty years.—R. S. '08, § 5419.

Sec. 6067 M. A. S. Consent of Local Authorities Necessary to Construct Street Railway—Liability for Damages.

Nothing in this Act contained shall be construed to allow the construction of any street or other railroad, or other structure or sub-structure, for any purpose on, below or elevated above the surface of the ground of any street or alley within the limits of any such city or town, by any corporation, person or persons whomsoever, without the consent of the local au-

thorities of such city or town; but no such consent, however enacted or expressed, on any consideration whatever, shall operate to relieve or protect any person, persons, or corporation or corporations constructing any such street or other railroad, or structure or sub-structure, as aforesaid, against any claim for damages to private property, which otherwise, without such consent, might be lawfully maintained against such person or persons, corporation or corporations.—R. S. '08, § 5420.

[Act referred to is the general provisions on incorporations.]

[When railroads subject to taxation for local improvements, sections 5957 and 6005 M. A. S.]

The above sections 6054 and 6056 M. A. S. specify the particular matters required to be stated in the articles and the special powers of a railroad corporation.

Constitutional Restriction—Territorial Incorporations.

No railroad or other transportation company in existence at the time of the adoption of this Constitution shall have the benefit of any future legislation, without first filing in the office of the Secretary of State an acceptance of the provisions of this Constitution in binding form.—Constitution, Art. XV, Sec. 7.

It will be noted that this last printed section from the Constitution applied only to companies then in existence (1876), and has no application to later incorporations.

The further provisions of the Constitution specially referring to railroads are:

They are declared to be public highways and common carriers, and have the right to connect lines and cross tracks.—Art. 15, Sec. 4.

Competing and parallel lines are not allowed to consolidate.—Art. 15, Sec. 5. Discriminations and preferences are forbidden.—Art. 15, Sec. 6. Consolidation with a foreign corporation shall not operate to oust the jurisdiction of the State Courts.—Art. 15, Sec. 14.

Time Limit.

A railroad company after filing is required to begin construction within two years and within five years to expend 20 per cent. of its capital, but may lessen the

required expenditure by reducing its stock and expending 20 per cent of the smaller amount.—Sec. 6058 M. A. S.

Preliminary Survey.

Railroad, wagon road, ditch and tunnel companies have the right to enter upon lands of their intended lines without previous condemnation to make examination and tentative survey, paying actual damages only if any are caused.—Sec. 2662 M. A. S.

Section 6168 M. A. S. provides for change of adopted line of route and for reversion in such case of the old right of way to the original owners on their return of its assessed value.

Eminent Domain.

Revised statutes, chapter 51 M. A. S., regulates proceedings to condemn the right of way.

Foreclosure.

A new company may be organized to take over the franchises of any company foreclosed or sold at judicial sale.—Secs. 6074, 6075 M. A. S.

Express Business.

Any railroad company may carry on its express business either in its own name or by contract with an express company, but its express charges are not allowed to exceed "double first-class freight rates as they now (1883) exist."—Secs. 6088-6090 M. A. S.

Sections 7620-7625 M. A. S. regulate the matter of unclaimed freight and the railroad's duty as a warehouseman.

Sale of Rolling Stock.

Special provision for executory contracts on purchase or lease of rolling stock are contained in sections 6172-6176 M. A. S.

Sections 6068-6073 M. A. S. purport to regulate the consolidation of railroad companies.

Foreign Railways.

Sections 6061, 6063 and 6076 M. A. S. allow foreign railroad corporations to purchase or lease lines within the State, extend the same and exercise the right of eminent domain. The formalities to be complied with by such foreign companies are stated in section 6077 M. A. S. And a Colorado railroad company may purchase connecting lines within or without the State, or may sell its own line to any company with which it might lawfully consolidate or to which it could lawfully lease.

Section 6150 M. A. S. gives the power to condemn a right of crossing track of another company.

Classes of Directors.

Section 6059 M. A. S. authorizes division of the board of directors into three equal classes, to be elected for terms of one, two and three years, and as the years elapse all of each class to be elected for the full term of three years.

Leases.

By stockholders' vote they are allowed to purchase or take leases of connecting lines.—Secs. 6061-6063 M. A. S.

Electric Street Railways.

Subdivision 5 of the Mills' Annotated Statutes chapter 138 entitled "Railroads," refers to electric street lines, purporting to allow county commissioners to grant them right of way over county roads, upon the written consent of a majority of the frontage feet along the line to be traversed; but it has been held that:

The right to construct and operate a street railroad is a franchise which the Sovereign authority and not the municipal authority may grant.—*Denver Ry. v. Denver C. Ry.*, 2 Colo. 673.

Miscellaneous Provisions.

The remainder of the chapter contains minute regulations as to killing of live stock, crossings, switches and fire guards, to refer to which in detail is entirely beyond the scope of this book.

Where a railroad corporation is empowered to acquire real estate without limitation in point of estate, it has the right to acquire a title in fee simple.—*Radetsky v. Jorgensen*, 70 Colo. 423, 202 Pac. 175.

Railroad Commission.

The Session of 1907 (R. S. Secs. 5445-5472) provided for a railroad commission of three members, with powers of general supervision and power to determine when rates are discriminating or preferential, but with no power to fix rates generally.

By the terms of the Act all forms of rebate are prohibited.

The constitutionality of the Act was questioned by quo warranto in *State R. R. Commissioner v. People*, 44 Colo. 345, 98 Pac. 7, but the court held that upon such action at the suit of a private realtor the court would not take jurisdiction and dismissed the suit.

Railroad companies are quasi public corporations and as such have no right to make discriminating contracts. A contract to refuse to build a side track at a certain town is against public policy and void.—*Pueblo R. Co. v Taylor*, 6 Colo. 1.

Articles of Railroad Company.

ARTICLE 1. The name of said company shall be *The Hahns Peak and Craig Railroad Company*.

ARTICLE 2. The objects for which said company is created are to construct a steam railroad from the town of Hahns Peak to the town of Craig, in the county of Routt, State of Colorado, and to maintain the same as a common carrier of freight and passengers for hire.

ARTICLE 3. The term of existence of said company shall be fifty years from the date of the filing of these articles.

ARTICLE 4. The government of the proposed corporation and the management of its affairs shall be vested in its board of directors, who shall, from their number, choose a president, vice-president, secretary and treasurer.

Preamble, other articles, attestation clause and acknowledgment as on page 39, bearing in mind that the number of incorporators must be at least five, and in the preamble their specific place of residence should be stated to comply with paragraph 3 of the above section 6054 M. A. S.

The above form contains all that is required by statute for a local railroad, but as they are generally complicated with intentions and purposes in re the taking over of prior corporate interests, we insert the well-drawn articles (furnished by the courtesy of Mr. E. E. Whitted) of:

The Colorado and Southern Railway Company.

Know All Men By These Presents. That we, the undersigned, Elmer E. Whitted, Alexis Dupont Parker, John S. Macbeth, Thomas F. Dunaway and B. L. Winchell, all residents of the city of Denver and State of Colorado, desiring to associate ourselves together under and in pursuance of the provisions of the laws of the State of Colorado relating to the formation of corporations, and to form a company thereunder for the purposes set forth in the following certificate, do make, sign and acknowledge this certificate of incorporation, and do state and declare as follows, to-wit:

First.—The corporate name of this company shall be *The Colorado and Southern Railway Company.*

Second.—This company is organized and created for the following objects and purposes, to wit:

To purchase, maintain, operate, extend and complete the railroads and telegraph lines formerly owned and possessed by The Denver, Texas and Gulf Railroad Company and by The Denver, Texas and Fort Worth Railroad Company, each a corporation organized and existing under the laws of the State of Colorado, and the railroads and telegraph lines formerly owned and possessed by The Union Pacific, Denver and Gulf Railway Company, a corporation organized and existing under the laws of the State of Colorado, and into which said The Denver, Texas and Gulf Railroad Company and said The Denver, Texas and Fort Worth Railroad Company had, with other corporations,

been consolidated, which have been sold and conveyed pursuant to a judgment and decree made by the Circuit Court of the United States for the District of Colorado, a court of competent jurisdiction, and entered on the thirteenth day of September, 1898, in a consolidated cause pending in said court, for the foreclosure of the three certain deeds of trust or mortgages herein-after described, between The American Loan and Trust Company, Trustee, complainant, and The Union Pacific, Denver and Gulf Railway Company, and The Mercantile Trust Company, Trustee, respondents; The Mercantile Trust Company, Trustee, complainant, and The Union Pacific, Denver and Gulf Railway Company and The American Loan and Trust Company, Trustee, respondents; The Mercantile Trust Company, Trustee, complainant, and The Union Pacific, Denver and Gulf Railway Company and The American Loan and Trust Company, Trustee, respondents: and under and by virtue of the power and authority contained in a certain deed of trust or mortgage, bearing date April 1, 1887, made to said The Mercantile Trust Company by said The Denver, Texas and Gulf Railroad Company, and under and by virtue of the power and authority contained in a certain deed of trust or mortgage bearing date November 1, 1887, made to said The Mercantile Trust Company by said The Denver, Texas and Fort Worth Railroad Company, and under and by virtue of the power and authority contained in a certain deed of trust or mortgage bearing date April 1, 1890, made to the said American Loan and Trust Company by said The Union Pacific, Denver and Gulf Railway Company.

Also to acquire and purchase the property and franchises so sold and conveyed, and to take, hold, exercise and enjoy all the estate, franchises, rights, powers and privileges, claim or demand, in law or equity, of said The Denver, Texas and Gulf Railroad Company, said The Denver, Texas and Fort Worth Railroad Company and said The Union Pacific, Denver and Gulf Railway Company, whose property and franchises were so sold and conveyed; said railroads so sold and conveyed as aforesaid, are more particularly described as follows, to-wit:

A main line beginning at a point in 16th street, Denver, Colorado, and running thence in a general southerly direction through the city of Denver, and through the counties or Arapahoe, Douglas, Elbert, El Paso and Pueblo, to a connection with the main line of The Denver and Rio Grande Railroad at Bessemer Junction, Colorado, a distance of about 128 miles; also beginning at a point on the La Veta branch of The Denver and Rio Grande Railroad known as Walsenburg Junction, Colorado,

running thence southerly through the city of Walsenburg and through the counties of Huerfano and Las Animas to a point on the boundary line between the State of Colorado and the territory of New Mexico, a distance of about 92.90 miles, and continuing thence southeasterly through Union county in New Mexico to a point on the boundary line of Texas and New Mexico, a distance of about 83.29 miles.

(Here follows the description of many other branches and lines):

Third.—The term of the corporate existence of this company shall be fifty (50) years from the date of the filing of this certificate in the office of the Secretary of State of the State of Colorado, and its corporate existence may be renewed in such manner and for such periods as may be authorized by the laws of said State.

Fourth.—The capital stock of this company shall be forty-eight million dollars (\$48,000,000), divided into four hundred and eighty thousand (480,000) shares of the par value of one hundred dollars (\$100) each. Of said capital stock, eight million five hundred thousand dollars (\$8,500,000), divided into eighty-five thousand (85,000) shares of the par value of one hundred dollars (\$100) each, shall be first preferred stock; eight million five hundred thousand dollars (\$8,500,000), divided into eighty-five thousand (85,000) shares of the par value of one hundred dollars (\$100) each, shall be second preferred stock, and thirty-one million dollars (\$31,000,000) divided into three hundred and ten thousand (310,000) shares of the par value of one hundred dollars (\$100) each, shall be common stock.

Holders of the first preferred stock shall be entitled to receive dividends thereon when earned and declared for any year, to the amount of four (4) per cent before any dividend for that year shall be set apart or paid on the second preferred stock or on the common stock, but such preferred dividends shall not be cumulative.

Holders of the second preferred stock shall be entitled to receive dividends thereon when earned and declared for any year, to the amount of four (4) per cent before any dividend shall be set apart or paid on the common stock, but such preferred dividends shall not be cumulative.

After the payment of such dividends on the first preferred stock and the second preferred stock for any year, the holders of the common stock shall be entitled to receive all dividends that may be earned and declared for that year.

The amount of the first preferred stock shall not be increased, except with the consent of the holders of a majority of the whole amount of the first preferred stock, given at a meeting of the stockholders called for that purpose.

Fifth.—The government of this company and the management of its affairs shall be vested in a board of nine directors and in the following officers, viz.: A president, a vice-president, a secretary, a treasurer and such other officers as the board of directors may from time to time appoint. The persons who shall act as directors of this company for the first year of its existence, and until their successors shall be elected and shall have qualified, are Edwin T. Rice, Jr., John French, James N. Wallace, Charles H. Ludington, Jr., Albert Fairfax, Frederick H. Herrick, Richard Outwater, Charles A. Kittle and William H. Bankier. The directors and officers shall receive such compensation for their services as the by-laws of the company may provide.

Sixth.—The principal office of the company shall be kept in the city of Denver, in the county of Arapahoe aforesaid, but the company may establish and maintain offices in the city of New York, and elsewhere, as its by-laws may provide.

Seventh.—The principal business of this company shall be carried on in the counties of Arapahoe, Boulder, Chaffee, Clear Creek, Costilla, Custer, Delta, Douglas, Eagle, Elbert, El Paso, Fremont, Garfield, Gilpin, Grand, Gunnison, Hinsdale, Huerfano, Jefferson, Lake, La Plata, Larimer, Las Animas, Logan, Mesa, Mineral, Montrose, Morgan, Ouray, Park, Pitkin, Pueblo, Rio Blanco, Rio Grande, Routt, Saguache, San Juan, San Miguel, Sedgwick, Summit, Washington and Weld, in the State of Colorado, and in such other counties in said State as the company may determine. A part of the business of the company will be carried on beyond the limits of the State of Colorado in the territory of New Mexico and in the state of Wyoming, and may be carried on elsewhere beyond the limits of the State of Colorado as may become necessary, or as the company may hereafter determine.

Eighth.—The board of directors of this company shall have power to make, from time to time, such by-laws as it may deem proper for the management of the affairs of the company, not inconsistent with the laws of the State of Colorado. Meetings of the board of directors of the company may be held in the city of New York and state of New York, and may be held elsewhere

beyond the limits of the State of Colorado, as may be provided by the by-laws of the company.

In Witness Whereof, We have hereunto subscribed our names and affixed our seals this 19th day of December, A. D. 1898.

ELMER E. WHITTED, (L. S.)

ALEXIS DUPONT PARKER, (L. S.)

JOHN S. MACBETH, (L. S.)

THOMAS F. DUNAWAY, (L. S.)

B. L. WINCHELL, (L. S.)

Acknowledged December 19, 1898.

CHAPTER XIX.

INSURANCE COMPANIES.

Sec. 3561 M. A. S. Purposes of Organization.

It shall be lawful for any insurance company organized under the laws of this state;

First.—To make insurance on dwelling houses, stores and all kinds of buildings and household furniture, and other property against loss or damage, including loss of use or occupancy, by fire, lightning, windstorm, tornado, cyclone, earthquake, hail, bombardment, invasion, insurrection, riot, civil war or commotion, military or usurped power, and by explosion whether fire ensues or not; also against loss or damage by water or other fluid to any goods or premises arising from the breakage or leakage of sprinklers, pumps or other apparatus erected for extinguishing fires or of other conduits or containers or by water entering through leaks or openings in buildings and of water pipes, and against accidental injury to such sprinklers, pumps, apparatus, conduits, containers or water pipes and upon vessels, boats, cargoes, goods, merchandise, freight and other property against loss or damage by all or any of the risks of lake, river, canal, inland and ocean navigation and transportation, including insurance upon automobiles, whether stationary or being operated under their own power, which shall include all or any of the hazards of fire, explosion, transportation, collision, loss by legal liability for damage to property resulting from the maintenance and use of automobiles, and airplanes, seaplanes, dirigibles or other aircraft, and loss by burglarly or theft, vandalism or malicious mischief, or the wrongful conversion, disposal or

concealment of automobiles, whether held under conditional sale contract or subject to chattel mortgages or any one or more of such hazards, but shall not include insurance against loss by reason of bodily injury to the person, and to effect reinsurance of any risk taken by it, provided the same shall be clearly expressed in the policy.—L. '21, p. 454, § 3, amending L. '13, p. 344, § 29.

By Act of 1915, p. 274, § 3606F¹ M. A. S. Life Insurance Companies are authorized to invest their capital and surplus in excess of \$150,000 in the stock of other insurance companies under certain restrictions.

Sec. 3563 M. A. S. Formation of New Companies.

Whenever any number of persons shall associate to form an insurance company for any of the purposes named in the preceding sections, and become incorporated in accordance with the provisions of Chapter 19 of the General Statutes of 1883, they shall file a copy of the articles of incorporation with the Commissioner, who shall submit the same to the Attorney General for examination, and if found by him to be in accordance with the provisions of this Act and not inconsistent with the Constitution of this State, he shall certify and deliver back the same to the Commissioner, who shall commission the persons named in the certificate of incorporation, or a majority of them, to open books for the subscription of stock in the company at such time and place as they shall deem it convenient and proper, but every such commissioner shall expressly state that it is issued subject to all the provisions of this Act, and a full compliance therewith by the persons receiving such certificate.

Before the said commission to sell stock is issued, the persons applying for the same shall give bond for the use of all persons shown to be interested to be approved by the Commissioner, in an amount equal to 25 per cent. of the proposed stock issue, conditioned for the return to the subscribers, or their assigns, of all sums paid by them on their subscription contracts, should the organization of the company not be perfected.

Whenever such capital stock has been subscribed and not less than the amount required by this Act shall have been fully paid in, and deposited with the Commissioner, as required by this Act, they shall notify the Commissioner, who shall cause an examination to be made, either by himself or some disinterested person, especially appointed by him for the purpose, who

shall certify under oath that the provisions of this Act have been complied with by said company, as far as applicable thereto. A subscription for stock within the meaning of this Act shall include only bona fide subscriptions from the public and not subscriptions by any corporation, association or individual who holds the same as sales agent, or broker, or for speculation or for the primary purpose of re-selling the same. Such certificate shall be filed in the office of said Commissioner, who shall thereupon deliver to such company a certified copy thereof, which shall be recorded in the office of the recorder of deeds of the county wherein the company is to be located, before the authority to commence business is granted. The provisions of this section shall also apply in the formation and authorization of domestic life and fire insurance companies formed upon the mutual plan, and to accident, health and hale associations formed upon the assessment plan, which are organized with a guaranty fund in lieu of capital as provided in this Act.

Whenever any such corporation shall thereafter desire to amend its articles of incorporation, it shall file its certificate of amendment with the Commissioner of Insurance before filing the same with the Secretary of State, and if the Commissioner of Insurance shall, with the advice of the Attorney General, find the same to have been legally adopted and to be in due legal form and to be not in conflict with the provisions of law governing such companies, then and not otherwise such certificate of amendment shall be filed with the Secretary of State.—L. '21, p. 455, § 4, amending L. '15, p. 269, § 1, which amended L. '13, p. 345, § 30.

The old section 3117 R. S. '08, as to the formation of Insurance Companies is construed in *Greiger v. Salzer*, 63 Colo. 167, 165 Pac. 240, holding that the special Act of 1907 and not the general incorporation law, controls.

Sec. 3568 M. A. S. Contracts and Policies Not Require Seal.

All policies or contracts made or entered into by any domestic company, may be made with or without the seal thereof. They shall be subscribed by the president or such other officers as may be designated by their by-laws for that purpose, and shall be attested by the secretary, and, being so subscribed, shall be obligatory upon such company.—R. S. '08, § 3118.

Sec. 3572 M. A. S. Insuring Minors Under Fifteen Years Forbidden.

From and after the passage of this Act it shall be deemed unlawful for any company or person to establish or conduct within the State of Colorado the business of insuring or causing to be insured by any company or person, any infant or infants or any minor who shall be under the age of fifteen years. Any person violating any or all provisions of this section, or any person found soliciting business for any company, in violation of this section, or any person or persons who shall issue or cause to be issued, policies of insurance on the lives of persons under the age of fifteen years, the same having been issued any time after the passage of this Act, shall be deemed guilty of a misdemeanor, and on conviction shall be liable to a fine of not less than twenty-five dollars or more than fifty dollars, or shall be imprisoned in the County jail of said county for a term of not less than three months, or more than six months, or shall be both fined and imprisoned, in the discretion of the Court, and shall be sentenced to pay all costs of prosecution.

Any insurance company violating this section shall have its authority to do business in this State revoked.

Provided, however, that the natural parent or parents, only, of a child of the age of one year and upward may take a policy of burial insurance thereon, the amount payable under which may be made to increase with advancing age, and which shall not exceed the sum specified in the following table, the ages therein specified being the ages at time of death, for an amount not exceeding the sums specified in the table;

between the ages of one and two years, thirty dollars;

between the ages of two and three years, thirty-four dollars;

between the ages of three and four years, forty dollars;

between the ages of four and five years, forty-eight dollars;

between the ages of five and six years, fifty-eight dollars;

between the ages of six and seven years, one hundred and forty dollars;

between the ages of seven and eight years, one hundred and sixty-eight dollars;

between the ages of eight and nine years, two hundred dollars;

between the ages of nine and ten years, two hundred and forty dollars;

between the ages of ten and eleven years, three hundred dollars;

between the ages of eleven and twelve years, three hundred and eighty dollars;

between the ages of twelve and thirteen years, four hundred and sixty dollars;

between the ages of thirteen and fifteen years, five hundred and twenty dollars.—L. '21, p. 449, § 2, amending L. '13, p. 348, § 40.

Sec. 3570 M. A. S. Must Act Through Resident Agents.

It shall be unlawful for any foreign insurance company to make, write, place or to cause to be made, written or placed in this State any insurance policy or contract of any kind to provide against any contingency which may be insured or guaranteed against, unless done through its duly and regularly appointed and authorized agent or agents, residents of this State; any insurance company violating this section, shall have its certificate of authority to do business in this State suspended not less than one year, and it shall only be renewed upon a written pledge from the directors or executive body in authority over the officers, that this section will be fully and faithfully observed.—L. '13, p. 348, § 38.

The above sections are taken from the Act of 1913, purporting to be a codification of the whole Insurance Law. It was preceded by an Act of 1907 which had been printed as the body of the Insurance Chapter in the Rev. Stats, '08, Secs. 3087-3160, which were repealed by the final section of the codifying Act.

This code provides for a commissioner of insurance and brings this class of business under strict State supervision.

In addition to the state and county filings, required of corporations generally by Sec. 3555 M. A. S. of the Insurance Code, the company must file with the Commissioner of Insurance a certified copy of its articles with a verified statement of its financial condition as set out in detail in that section.

Annual statements are required to be filed with the commissioner.—Secs. 3547, 3556 M. A. S. A tax of two per cent on all local premiums is imposed by Sec. 3548 M. A. S., in lieu of all other special taxes, but not barring ordinary taxes on real and personal property.

An annual certificate of authority in the nature of a license is to be issued to each company.—Sec. 3553 M. A. S. And every local agent must have a special license.—Sec. 3553 M. A. S. The commissioner is made the process agent for all foreign companies.—Sec. 3554 M. A. S.

The minimum capital of each class of insurance companies is stated in Sec. 3557 M. A. S. No company is allowed to cover more than one of the kinds of insurance mentioned in Sec. 3561 M. A. S., above printed. The apparent idea of this section is to prevent the union of fire with life insurance, as mentioned in paragraphs numbered "first" and "second," and to treat the subdivisions in paragraph "third" as one class, so that a company could be organized to cover all or any one or more of its eight subdivisions.

Before the certificate of authority is issued a copy of the articles must be filed with the commissioner for submission to the Attorney General as required by said section 3562 M. A. S. It is obvious that this submission to the Attorney General should be before the presentation to the Secretary of State, so as to amend if necessary to conform to his suggestions before any filings are made.

The number of directors may be from three to twenty-one. § 3563 M. A. S.

Section 3571 M. A. S. attempts to deprive foreign companies of the protection of the Federal Courts. But all such statutes purporting to deprive citizens of the protection of the Federal Courts are void.—*Frear v. Western Union Tel. Co.*, 241 U. S. 329, 36 S. C. R. 563.

Sections 3575, 3576 and 3591 M. A. S. detail many items forbidden in life insurance policies as to suicide, time limitations and other details.

All forms of policies must be submitted to the commissioner for approval.—Sec. 3579 M. A. S.

Mutual companies are required to print that word "mutual" on their policies and renewal receipts and their notes payable are made non-negotiable.—Secs. 3602, 3603 M. A. S.

This code Act contains 83 sections. Its sections 3575 M. A. S., 3553, 3562, 3564, 3573 and 3594 M. A. S. amended by Act of 1915, p. 264, and sections 3587, 3589 and 3605 M. A. S. as amended by the Acts of 1917, pp. 275, 277.

As to its section 81, an omnibus section containing in-terminable subdivisions, the enacting clause of the 1915 Act purports to substitute the whole section by three lines of new matter presenting the question as to whether the whole section is repealed or whether the new three lines are to be taken as an addition to the section.

The practical effect of the Code and its amendments is to place all insurance companies under the supervision of the commissioner and every question of corporation law under insurance requires a careful analysis of this Code and its amendments above noted.

We subjoin a form for the articles of a stocked fire insurance company, with the observation that the varieties of insurance companies are so many, not only as to the subject-matter of the insurance, but as to the mode of gathering in their assets, that no one form can cover much ground, and it is not to be assumed that any corporation of any profit-earning class should file its articles without legal advice. The object of this book is, not to oust the legal profession from their proper office, but to aid them in its performance.

Articles of Fire Insurance Company.

ARTICLE 1. The name of said company shall be *The Coronado Fire Insurance Company*.

ARTICLE 2. The objects for which said company is created are to make insurance on all kinds of buildings and all sorts of personal property against loss or damage by fire, and to issue policies, collect premiums, adjust and pay losses, and do all things incident to the business of insurance against fire, includ-

ing where so intended, loss or damage by lightning, tornadoes and hail, and the risks of inland transportation.

ARTICLE 3. The term of existence of said company shall be twenty years.

Other articles, preamble and acknowledgment as on page 39.

The corporate term of life insurance companies, instead of being limited as in all other cases is "perpetual."
—Sec. 980 M. A. S.

The Act of 1917, p. 275, [§ 3605 M. A. S.] relates only to foreign mutual companies and 1917, p. 277, [§ § 3587, 3589 M. A. S.] amends only certain rebate sections of the Act of 1913.

Fees.

The fees to be paid by the various classes of insurance companies are stated in Secs. 3546, 3597, 3606 and 3606g M. A. S.,

Taxes.

Section 16 is intended to protect insurance companies from municipal oppression in the form of license taxes and further provides for a tax of two per cent on premiums in lieu of all other taxation except the ordinary tax on real and personal property.

From this two per cent tax by the same section, fraternal and benevolent associations are exempt and also all purely mutual domestic fire insurance companies and also all companies having fifty per cent of their assets invested in state or municipal securities.

County Protective Associations.

Section 3606 M. A. S. provides for the formation of local protective associations to insure the members against "loss by fire, lightning, tornado, wind storm, or hail storm."

The form below covers the statutory requirements as to this peculiar and local kind of company, but in addition they file with the commissioner a copy of their "Constitu-

tion and By-Laws" and a copy of their proposed forms of "Certificates of Membership, or of Insurance."

Articles of County Protective Association.

KNOW ALL MEN BY THESE PRESENTS That the undersigned (25 or more names), citizens of Colorado, residents of the county of Grand, in said State, and owning insurable property in said county, do hereby form an organization, which shall be known as *The Grand County Mutual Protective Association*, for the purpose of insuring each other and those who shall later receive certificates of membership against loss by fire, lightning, tornadoes, wind storms and hail storms on the property of the members situate in said county, and adopt the following articles as our articles of incorporation, under the terms of section 74 of the Codified Insurance Act, approved April 15, 1913.

ARTICLE 1. The name of said association shall be *The Grand County Mutual Protective Association*.

ARTICLE 2. The head office of said company shall be in the town of Hot Sulphur Springs in said county.

ARTICLE 3. The association shall do business in the county of Grand, in this State only.

ARTICLE 4. The object of the association is to insure its members against the results of losses by fire, lightning, tornadoes, wind storms and hail storms, and to enforce any contract which may be by them entered into, by which those entering therein shall agree to be assessed specifically for incidental purposes and for the payment of losses which occur to its members.

ARTICLE 5. The kinds of property to be insured shall be buildings, crops, live stock and all improvements on the lands owned or occupied by the members.

ARTICLE 6. The number of directors who shall serve for the first year shall be nine.

ARTICLE 7. The term of existence of said company shall be twenty years.

In Witness Whereof, We have hereunto set our hands and seals this first day of October, A. D. 1916.

Signatures and acknowledgment as on page 40.

A certified copy of these articles, after the original has been filed with the Secretary of State, must be filed with the Commissioner of Insurance and approved by the Attorney General.

The article concerning cumulative voting is omitted because inapplicable. Section 3606 M. A. S. above men-

tioned allows but one vote to each member and the certificate of membership is not, strictly speaking, a share of stock, although often spoken of as such.

Workmen's Accident Associations.

The Act of 1915, p. 588, [§ § 8231-8249 M. A. S.] provides a special form of corporation for workmen associating together to insure each other against accident. It has a very limited application and seems useless in view of the provisions of the Workmen's Compensation Act of 1915, p. 562 [§ § 3472A-3472W¹ M. A. S.]; 1919, p. 700 [§ § 8081-8230 M. A. S.].

Fraternal Benevolent Societies.

Fraternal Benevolent Societies are governed by a Special Act of 1911, p. 422, containing 32 sections [§ § 3020-3051 M. A. S.]. It seems to cover any "corporation, society, order or voluntary association" without capital stock and not organized for profit, especially including what are known as lodges and societies which provide benefits or death losses for their own members.

On the other hand, Masonic and Odd Fellows lodges and many others [§ 3049 M. A. S.] are exempt from its provisions and it seems to be practically limited to the above indicated societies which are to a certain extent insurance companies.

It does not seem that they are required to incorporate at all. At the same time they are privileged to incorporate, not under the general laws, but by filing certain papers with the Commissioner of Insurance and are placed under the supervision of that officer, who issues an annual license.

Miscellaneous Provisions.

A proposed insurance corporation was held merely the agent of the commissioners, who were individually chargeable with all its acts.—*Greiger v. Salzer*, 63 Colo. 167, 165 Pac. 240.

the same shall be no longer required for the purposes of the association.

Any stockholder wishing to withdraw may do so at such time and on such notice and terms as provided by the by-laws; *Provided*, That no association, either foreign or domestic, doing business in this state shall, on such business in paying the withdrawal of any certificate or any number of certificates originally issued to the same person, deduct an amount to exceed two dollars (\$2.00) per share as a withdrawal fee, which shall be further limited so that such fee shall not exceed ten dollars (\$10.00) in any one transaction, irrespective of the number of shares in such certificates included in such transaction, when he or she shall be entitled to receive the amount provided by the by-laws, or determined by the board of directors, less all fines or other charges; *Provided*, That at no time shall more than one-half of the monthly receipts of the association be applicable to the demands of withdrawing shareholders without the consent of the board of directors, and that no shareholder in debt to the association shall be entitled to withdraw or transfer his shares held without the consent of the directors of the association until such debt shall be paid.—R. S. '08, § 952.

Sec. 495 M. A. S. By-Laws — Contents — Filed With County Clerk.

The number, titles, functions and compensation of the officers of any such association, their terms of office, the time of their election as well as the qualifications of the electors, and the votes and manner of voting, and the periodical meetings of such corporation, and the manner and terms upon which loans shall be made and repaid shall be determined by the by-laws.

All such by-laws shall be made by the stockholders at their annual meeting, or by the board of directors of such corporation at any regular meeting of the board of directors.

Every such corporation, before commencing business under this Act, shall file a copy of its by-laws with the clerk and recorder of the county in which the principal business of such corporation is carried on; and shall likewise so file copies of all subsequent changes and amendments of such by-laws; and all such corporations now doing business in this State shall immediately file copies of their by-laws with the clerk and recorder of the proper county; and also so file all subsequent changes and amendments thereto; *Provided*. That no such subsequent change or amendment to such by-laws shall in any manner change or

on loans advanced, and premiums bid by members for the right of precedence in taking loans, as the corporation may provide for in its constitution or by-laws. Also, to acquire, hold and convey all such real estate and personal property as may be legitimately pledged to it upon said loans, or may otherwise be transferred to it in the due course of its business.—R. S. '08, § 950.

Sec. 493 M. A. S. Words Necessary in Corporate Name.

The words "Loan and Building Association," "Building Association" or "Building and Loan Association" shall form part of the corporate name of every such corporation.—R. S. '08, § 951.

A corporate name not containing the above statutory words is not a Building and Loan Association.—*International Imp. Co. v. Wagner*, 22 Colo. App. 489, 125 Pac. 597.

Sec. 494 M. A. S. How Stock Issued—Borrowing Members—Withdrawals—Fees.

Every such association now or hereafter incorporated under the laws of this State complying with the provisions of this Act, may issue and sell its shares of stock in one or more successive series, or upon the permanent or Dayton plans in the denominations and to the extent as limited in the articles of incorporation of such associations, either fully or partially paid up in periodical or other installments, or upon all, either, or any of these plans and with or without full participation in the earnings of such association, or partially in limited dividend-bearing stocks as may be provided by the by-laws of such association, for the purpose of raising a fund to make advances to members upon first mortgage, or trust deed, liens, upon real estate and upon the shares of stock issued by such association, or upon both such securities.

Borrowing members of such associations shall be required to carry such periodical assessment stock with the association as shall have a par value equal to the loan and every share issued shall be subject to a lien for any advance made thereon, or other claim against the holder.

Every such association may redeem its shares, and repay the funds acquired thereby with such earnings as the same may be entitled according to the terms of the issue thereof whenever

the same shall be no longer required for the purposes of the association.

Any stockholder wishing to withdraw may do so at such time and on such notice and terms as provided by the by-laws; *Provided*, That no association, either foreign or domestic, doing business in this state shall, on such business in paying the withdrawal of any certificate or any number of certificates originally issued to the same person, deduct an amount to exceed two dollars (\$2.00) per share as a withdrawal fee, which shall be further limited so that such fee shall not exceed ten dollars (\$10.00) in any one transaction, irrespective of the number of shares in such certificates included in such transaction, when he or she shall be entitled to receive the amount provided by the by-laws, or determined by the board of directors, less all fines or other charges; *Provided*, That at no time shall more than one-half of the monthly receipts of the association be applicable to the demands of withdrawing shareholders without the consent of the board of directors, and that no shareholder in debt to the association shall be entitled to withdraw or transfer his shares held without the consent of the directors of the association until such debt shall be paid.—R. S. '08, § 952.

Sec. 495 M. A. S. By-Laws — Contents — Filed With County Clerk.

The number, titles, functions and compensation of the officers of any such association, their terms of office, the time of their election as well as the qualifications of the electors, and the votes and manner of voting, and the periodical meetings of such corporation, and the manner and terms upon which loans shall be made and repaid shall be determined by the by-laws.

All such by-laws shall be made by the stockholders at their annual meeting, or by the board of directors of such corporation at any regular meeting of the board of directors.

Every such corporation, before commencing business under this Act, shall file a copy of its by-laws with the clerk and recorder of the county in which the principal business of such corporation is carried on; and shall likewise so file copies of all subsequent changes and amendments of such by-laws; and all such corporations now doing business in this State shall immediately file copies of their by-laws with the clerk and recorder of the proper county; and also so file all subsequent changes and amendments thereto; *Provided*, That no such subsequent change or amendment to such by-laws shall in any manner change or

affect the terms and conditions of any loan made prior to such change or amendment in said by-laws.—R. S. '08, § 953.

[Copy of articles and by-laws shall be filed with inspector of associations, section 512 M. A. S.]

Sec. 496 M. A. S. Loans — Investments — What Real Estate May Be Held—May Borrow Money.

No officer or director of any association shall negotiate for or receive a loan from such association, neither shall any loan be granted by such association to other parties upon security in which any officer or director of such association has an interest of any kind, except that any officer may be permitted to receive a stock loan to an extent and not to exceed ninety per cent of the book value of the collateral shares; *Provided*, That the foregoing provisions of this section shall not apply to domestic associations doing business only in one county of the State. Any association may, from time to time, as its by-laws may provide, invest any portion of its funds not immediately required by its members in loans upon real estate or other securities, or invest in bonds, warrants or other securities, or may loan such surplus to any other association complying with this Act.

Real estate may be purchased by such association under its own foreclosure proceedings, judgment or lien, or whenever it may be necessary to protect itself from loss, and the same shall be converted into money by sale as speedily as may be without detriment to the interests of the association.

Any association under the laws of this State may purchase, build, hire or take upon lease any building for conducting its business, and may adopt and furnish the same, and may purchase, or hold upon lease any land for the purpose of erecting thereon a building for conducting the business of the society, and may sell, exchange or let such building, or any part thereof. Any association incorporated under the laws of this State, and complying with the terms of this Act, may, in such manner and to such extent within the limits hereinafter stated as may be provided in its by-laws, negotiate for and receive such long time or short time loans on note or bond, as may be found necessary to advance the purposes of the association.

Provided, That no association shall borrow money at any time to exceed one-fourth of its accumulated assets.

Provided further, That no note, bond, or other form of evidence of such debt shall be secured by the pledge of notes, bonds, or other securities held by the association, in such manner as to

permit a sale of such collateral, but only to the extent of giving to the pledgee a prior lien for repayment on the proceeds of such collaterals when collected in the usual way according to their respective terms, except that this section shall not be held to abridge the right of any association to secure any loan obtained by mortgage or trust deed upon its real estate holdings, to the same extent and manner as might be done by any other corporation under the laws of this State.—R. S. '08, § 954.

Sec. 497 M. A. S. Loans to Members — Notes Non-Negotiable.

Every such corporation organized under the laws of the State of Colorado may loan its accumulation to members upon such plan of repayment as provided by its by-laws. They may charge, contract for and recover a premium upon such a plan as may be provided for in the by-laws, or note, or other evidence of indebtedness taken by such association, all of which notes shall be in form non-negotiable.—R. S. '08, § 955.

Sec. 498 M. A. S. Fines and Interest Not Usurious—Fees for Non-Payment of Dues.

No premiums, fines, or interest on such premium that may accrue to the said association according to the provisions of this Act, shall be deemed usurious; and the same may be collected as debts of like amount are now by law collected in this State; but no fees for non-payment of dues shall exceed five per cent per month for the first sixty days, and two per cent per month thereafter.—R. S. '08, § 956.

Sec. 499 M. A. S. Shall Not Expire by Failure to Elect Officers.

No corporation organized under this Act, shall cease or expire, from neglect on the part of the corporation, to elect officers at the time mentioned in their charters or by-laws, and all officers elected by such corporation shall hold their office until their successors are duly elected and qualified.—R. S. '08, § 957.

Sec. 500 M. A. S. May Purchase at Public or Private Sale—Disposition of Property.

Any building or loan association incorporated by or under the provisions of this Act, or anyone heretofore or hereafter in-

corporated, is hereby authorized and empowered to purchase at any sheriff's or other judicial sale or at any other sale, public or private, any real estate upon which said association may have, or hold any mortgage, trust deed, judgment, lien or other incumbrance, or in which said association may have an interest, and the real estate so purchased, or any other that such association may hold, or be entitled to at the passage of this Act, to sell, convey or lease at pleasure, to any person or persons whatever, and all sales of real estate heretofore made by such association, to any person or persons not members of the association so selling are hereby confirmed and made valid.—R. S. '08, § 958.

Sec. 501 M. A. S. Officers and Directors—Election.

The business of every building and loan association created or incorporated under this Act, shall be managed and controlled by a president, a board of directors or trustees, a secretary and treasurer, and such other officers or agents as the by-laws may provide. The directors or trustees shall be elected annually by the stockholders, or members at the time fixed by the by-laws; and shall hold their office until others are chosen and qualified in their stead; the manner of such choice, and of the choice or appointment of all other agents or officers shall be prescribed by the by-laws.

The number of directors or trustees shall not be less than three nor more than thirteen, one of whom shall be chosen president by the directors or by the members of the corporation, as the by-laws may direct; the stockholders of said corporation may, at a meeting called for that purpose, determine, fix or change the number of directors or trustees, not less than three, that shall thereafter govern its officers; and a majority of the whole number of such directors or trustees, shall be necessary to constitute a quorum.

Treasurer to Give Bond.

The treasurer shall give bond in such sum and with such surety as shall be required by the by-laws, for the faithful discharge of his duties, and he shall keep the moneys of the corporation in a separate bank account to his credit as treasurer; and if he shall neglect or refuse so to do, he shall be liable to a penalty of fifty (50) dollars for every day he shall neglect so to do, to be recovered for the benefit of any such association, at the suit of any stockholder, and shall be subject to removal from office; *Provided*, That such building and loan association may

designate as its treasurer some responsible bank or trust company.—R. S. '08, § 959.

Sec. 502 M. A. S. Vacancies, How Filled.

In case of the death, removal or resignation of the president, or any of the directors, secretary, treasurer, or other officer of such corporation, the remaining directors may fill the vacancy thus created until the next general election.—R. S. '08, § 960.

Sec. 504 M. A. S. Penalty for Making False Entry or Report.

Every person who shall wilfully or knowingly subscribe or cause to be made any false report, false statement or false entry in any book of any association organized for the purposes set forth in section 1 of this Act, or exhibit false papers with the intent to deceive any person, or shall make, state or publish any false report or false statement of the financial condition of such association, shall be deemed guilty of a felony and, upon conviction thereof, shall be fined in any sum not exceeding five thousand (5,000) dollars, and be imprisoned in the state penitentiary not less than one, nor more than five years.—R. S. '08, § 962.

[Section 1 referred to is section 492 M. A. S.]

Sec. 505 M. A. S. Appointment of Receiver.

Whenever it shall appear to any party in interest, or to any creditor of any such association heretofore organized, or which may hereafter be organized, that such association is conducting its business in an unsafe or unauthorized manner, or is jeopardizing the interest of its members, or that it is unsafe for such association to transact business, he or they shall communicate such fact to the attorney general of this State, whose duty it shall then become to investigate the affairs and conditions of such association.

And if upon such investigation he shall be satisfied that such association is conducting its business in an unsafe or an unauthorized manner, he shall apply to the District Court of the county where such association is located for the appointment of a receiver to take charge of said association, and if such fact or facts be made to appear to such District Court, it shall be sufficient to authorize the appointment of such receiver, and the making of such orders and decrees in such case as equity may require.—R. S. '08, § 963.

[The building and loan inspector may request the attorney general to apply for a receiver, see section 515 M. A. S.]

Sec. 510 M. A. S. Provisions as to Constitution and By-Laws.

Every building and loan association hereafter formed shall be organized under the provisions of this Act, and shall adopt a constitution which shall substantially give effect to the provisions of this Act; and shall also adopt such by-laws for the government and management of its business as it shall deem proper; *Provided*, That the same shall not be inconsistent with this Act, and shall not contravene the laws or Constitution of this State, or the United States; and may alter and amend the same from time to time in such manner as may be provided by its articles of incorporation.—R. S. '08, § 968.

Besides the usual record in the office of the Secretary of State and the filing with the county clerk, a copy of their articles and also of their by-laws must be filed in the office of the inspector of building and loan associations before commencing business, in which office also they are required to file a semi-annual report on the first day of February and the first day of August of each year.—Secs. 512-514 M. A. S.

Chapter 20 M. A. S. purports to regulate the issue of stock and their action generally. It is compiled from an Act of 1897 and one of 1907, the latter creating in the Auditor's office the "Bureau of Building and Loan Associations."

The earlier Act, section 503 M. A. S., requires the filing of a semi-annual report in the county clerk's office; the later Act, section 513 M. A. S., passed in 1907, requires the filing of a similar report with the bureau. Possibly the two Acts are not inconsistent, and both filings may be required, but we would assume that section 503 M. A. S. is abrogated.

Articles of Building and Loan Association.

ARTICLE 1. The name of said company shall be *The Cherry Creek Building and Loan Association*.

ARTICLE 2. The objects for which said company or association is formed are to raise a fund by the collection of dues or stated payments from its stockholders or members to be loaned among its members, and to levy, assess and collect from its members such sums of money by rates of stated dues, fines, interest on loans advanced and premiums bid by members for the right of precedence in taking loans, according to the terms to be provided in its constitution and by-laws. Also, to acquire, hold and convey all such real estate and personal property as may be legitimately pledged to it upon said loans, or may otherwise be transferred to it in due course of its business.

ARTICLE 7. The constitution and by-laws to be adopted by said company may be amended by a two-thirds vote of all the stockholders at any annual meeting or meeting specially called for that purpose.

Preamble, other articles and acknowledgment as on page 39.

Besides its articles, the above statute provides for a constitution as well as by-laws. Sec. 495 M. A. S. prescribes certain items to be covered by the by-laws. As both are amendable by the same authority and by the same procedure, it seems a matter of indifference as to what goes into one or the other, but the substantial policy of the association is generally set forth in the constitution. Section 510 M. A. S. contemplates that the articles should determine how the constitution and by-laws should be amended, and article 7 above printed is drafted to comply with this provision.

CHAPTER XXI.

CORPORATIONS NOT FOR PROFIT.

In the corporation chapter of the Mills' Annotated Statutes there are subdivisions headed "Corporations Not For Profit," "Religious, Educational and Benevolent Societies," "Cemeteries" and "Joint Stock Companies," for religious, educational and benevolent purposes, which terms obviously overlap each other and

cover the same ground, producing extreme confusion, but by close analysis it seems that the real classes are:

(a) Corporations not for profit, other than religious, educational or benevolent societies, or cemeteries.

(b) Religious, educational and benevolent societies.

(c) Cemeteries.

(d) The subdivision, "Joint Stock Companies," is confined to religious, charitable and benevolent societies and is an alternative method of incorporation which may be adopted in place of incorporation under the forms prescribed for class B.

Lodges, clubs, secret societies, labor unions, granges and associations for any sort of social, literary or political purpose all belong to class A. Churches, synods, colleges, universities, schools, hospitals and presumably libraries belong to class B, in either class the idea of profits or dividends being excluded. Schools or hospitals, or other like institutions formed with the idea of teaching or treating for profit should doubtless incorporate as business companies.

Many such organizations exist without attempting any form of incorporation, but in such instances they constitute only partnerships or quasi corporations, and in case of litigation must sue and be sued by the individual names of the associates, adding the name or style by which they are known.

An exception to this statement is that, by statute, Masonic and Odd Fellows lodges, or "other like benevolent or fraternal society duly chartered by its grand body," may hold and convey real estate and sue and be sued by the name and number of the lodge.—Secs. 845-848 M. A. S.

Fraternal Benevolent Societies are a class by themselves governed by sections 3020-3051 M. A. S.

With these preliminary suggestions we will endeavor to reconcile the sections in the order in which they occur in the chapter.

**A. Corporations Not for Profit Other Than Religious,
Educational or Benevolent Societies or
Cemeteries.**

Sec. 1125 M. A. S. Essential Details of the Articles.

Any three or more persons, citizens of the United States, who shall desire to associate themselves for any lawful purpose (other than pecuniary profit), under the provisions of this Act, may make, sign and acknowledge before any officer authorized to take acknowledgments of deeds in this State, and file in the office of the Secretary of State, a certificate in writing, in which shall be stated the name or title by which such corporation, association or society shall be known in law, the particular business and objects for which it is formed, the number of its directors, trustees or managers, and the names of those selected for the first year of its existence.—R. S. '08, § 1013.

Sec. 1126 M. A. S. Certificate of Authority—Record.

Upon filing a certificate as aforesaid, the Secretary of State shall thereupon issue a certificate of the organization of the corporation, association or society, duly authenticated under his hand and seal of State, and the same shall be recorded in the office of the recorder of deeds of the county in which the principal place of business of such corporation, association or society is located. Upon complying with the foregoing conditions the corporation, association or society shall be deemed fully organized, and may proceed to business.—R. S. '08, § 1014.

It will be noted that only one original set of articles is executed, which is filed with the Secretary of State, but from that office a certificate of statutory compliance issues for record in the county clerk's office, according to the following form:

STATE OF COLORADO

OFFICE OF THE SECRETARY OF STATE.

UNITED STATES OF AMERICA, STATE OF COLORADO, SS.

CERTIFICATE

I, James R. Noland, Secretary of State, of the State of Colorado, do hereby certify that William N. Vaile, Mary F. Lathrop and Armour C. Anderson, citizens of the United States and residents of the State of Colorado, being desirous of forming a corporation (not for pecuniary profit), under and by virtue of the

provisions of Chapter XXXIV of Mills Annotated Statutes of the State of Colorado, entitled "Corporations," have made, signed, acknowledged, and this first day of September, A. D. 1917, at the hour of 10 o'clock A. M. filed in my office the certificate of incorporation of *The Cliff Dwellers Research Society*.

That in Such Certificate is set forth the name of such corporation, the particular business and objects for which said corporation is formed, the number of its directors, and the names of those directors who are to manage the affairs and concerns of said corporation for the first year of its existence, together with the location of its principal office and place of business in this State.

Now, Therefore, Pursuant to the provisions of section 169 of said chapter XXXIV, I hereby certify that the said *The Cliff Dwellers Research Society* is a duly organized corporation under the laws of the State of Colorado.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State, at the city of Denver, this first day of September, A. D. 1917.

[STATE]

JAMES R. NOLAND.

[SEAL.]

Secretary of State.

The next section, after stating that compliance with the above gives corporate existence, which is not limited to any term of years, enumerates their powers and duties:

Sec. 1127 M. A. S. Corporate Powers.

Corporations, associations and societies (not for pecuniary profit) founded under this Act, shall be bodies corporate and politic by the name stated in such certificate.

1. *Succession*.—And by that name they and their successors shall and may have succession;

2. *Suits*.—And shall be persons in law capable of suing and being sued;

3. *Contracts*.—May have power to make and enforce contracts in relation to the legitimate business of their corporation, society or association;

4. *Seal*.—May have and use a common seal, and may change or alter the same at pleasure;

5. *Own Property*.—And they and their successors, by their corporate name, shall, in law, be capable of taking, purchasing, holding and disposing of real and personal estate for purposes of their organization;

6. *By-laws*.—May make by-laws not inconsistent with the laws of this State, in which by-laws shall be described the duties of all officers of the corporation, society, or association and the qualification of members thereof:

7. *Benefits—Insurance*.—Associations and societies which are intended to benefit the widows, orphans, heirs and devisees of deceased members thereof, and where the members shall receive no money as profit or otherwise, shall not be deemed insurance companies.—R. S. '08, § 1015.

A not-for-profit corporation may collect delinquent dues by suit, or it may expel a member for non-payment, but it cannot expel a member without notice and a chance to be heard.—*Chamber of Com. v. Green*, 8 Colo. App. 420, 47 Pac. 140.

An Odd Fellows Lodge held to be such a corporation as may take the benefit of the Bankrupt Act.—*In re Carthage Lodge*, 230 Fed. 694.

Sec. 1128 M. A. S.—Trustees, Directors or Managers.

Corporations, associations and societies (not for pecuniary profit), formed under the provisions of this Act, shall elect trustees, directors or managers from the members thereof, at such times and places and for such period as may be provided by the by-laws, who shall have control and management of the affairs and funds of the corporation, society or association.—R. S. '08, § 1016.

Sec. 1129 M. A. S. Dividend Only on Dissolution.

No dividend or distribution of the property of any such corporation, association or society shall be made until all debts are fully paid, and then only upon its final dissolution and surrender of organization and name, nor shall any distribution be made except by a vote of a majority of the members. When a distribution of any of their property is contemplated, the directors, trustees or managers shall file a statement under oath, in the office of the recorder of deeds, in the county where the business office is located, that all debts of the corporation, association or society are paid, and in case a distribution shall be made before filing such statement under oath, or if such statement shall be wilfully false, said directors, trustees, or managers shall be jointly and severally liable for the debts of such corporation, association or society.

Certificate of Dissolution.

When a final dissolution of any such corporation, association or society, organized by virtue of this Act, has been agreed upon, the directors, trustees or managers shall file, in the office of the Secretary of State, a certificate thereof under seal of the corporation, association or society, and upon filing said certificate, such organization shall cease to exist.—R. S. '08, § 1017.

Articles of Incorporation—Class A.

KNOW ALL MEN BY THESE PRESENTS. That we, James Duff, David H. Moffat, Jr., Moses Hallett, A. H. Jones, W. S. Cheesman and H. R. Wolcott, all residents of the city of Denver, in the State of Colorado, and citizens of the United States, being desirous of associating ourselves for social purposes, and not for pecuniary profit, under, by virtue and in pursuance of the provisions of chapter XXXIV of Mills Annotated Statutes of Colorado, being an Act entitled, "An Act to provide for the Formation of Corporations," and the acts amendatory thereof and in addition thereto do hereby, as provided in said chapter, avail ourselves of its provisions, associate ourselves together, and we do hereby make, execute and acknowledge this, our certificate in writing, of an intention so to become a body corporate, not for pecuniary profit, and we do state and set forth:

1. The corporate name of our said company or society shall be *The Denver Club*.

2. The particular business and object for which our said association is formed shall be to promote social intercourse among ourselves and associates therein, and to have and maintain, in the city of Denver, in the county of Arapahoe, and State of Colorado, for the use of ourselves and said associates, for the purposes aforesaid, a club house with all the appurtenances and belongings, matters and things of a club and club house as usual thereto.

3. That the number of directors to manage the said club or association shall be thirteen.

4. That the following are the names of the directors of said club or association for the first year of its existence, to-wit: Messrs. W. S. Cheesman, James Archer, Hugh Butler, A. H. Jones, J. W. Savin, G. W. Clayton, Richard Pearce, John L. Routt, Moses Hallett, James Duff, E. W. Rollins, D. H. Moffat, Jr., and H. R. Wolcott.

5. That the directors of said club or association shall have power, from time to time, to make such prudential by-laws as

they shall deem proper to the management of the affairs of said club for the government and management of its business.

In Witness Whereof, We have to this certificate respectively signed our names this twenty-eighth day of July, A. D. 1880.

JAMES DUFF,
DAVID H. MOFFAT, JR.,
MOSES HALLETT,
A. H. JONES,
W. S. CHEESMAN,
H. R. WOLCOTT.

STATE OF COLORADO, COUNTY OF ARAPAHOE, SS.

On this twenty-eighth day of July, A. D. 1880, before me, the subscriber, a notary public within and for said county, in the state aforesaid, personally appeared James Duff, David H. Moffatt, Jr., Moses Hallett, A. H. Jones, W. S. Cheesman and H. R. Wolcott, who are to me known to be the same persons who subscribed the foregoing instrument in writing, and each acknowledged that he executed the same as his free act and deed, for the uses and purposes therein set forth.

Witness my hand and notarial seal this twenty-eighth day of July, A. D. 1880.

(Seal)

Charles W. Betts,
Notary Public.

B. Religious, Educational and Benevolent Societies.

Sec. 1130 M. A. S. Church, Congregation or Society, How Organized.

The foregoing provisions shall not apply to any religious, educational or benevolent societies or associations, but any church, congregation or society, formed for religious worship, educational or benevolent purposes, may become incorporated under this Act in the following manner, to-wit: By electing or appointing, according to its usages or customs, at any meeting held for that purpose, two or more of its members as directors, trustees, wardens or vestrymen (or such other officers whose powers and duties are similar to those of trustees as shall be agreeable to the usages and customs, rules and regulations of such congregation, church or society), and may adopt a corporate name, and upon the filing of the affidavit as hereinafter provided, it shall be and remain a body politic and corporate by the name so adopted.—R. S. '08, § 1018.

"The Foregoing Provisions."

The above section is a part of the original corporation chapter of the General Laws of 1877. Its first sections referred to formation of business corporations. Then followed the subdivision of "corporations not for pecuniary profit," and then came the subdivision "religious, educational and benevolent societies," for which it proceeded to formulate a separate mode of incorporation. It is therefore evident that the words "the foregoing provisions shall not apply" excluded or excused corporations classed as "religious, educational or benevolent" from compliance with anything required of any other class of corporations and made them a class by themselves.

**Sec. 1131 M. A. S. Record of Affidavit of Chairman
Becomes the Articles of Incorporation of Class B—
Statutory Form.**

The chairman or secretary of such meeting shall, as soon as may be after such meeting, make and file in the office of the recorder of deeds in the county in which such congregation, church or society is organized, or in case of a general incorporation, as provided in section forty-four, in the office of the Secretary of State, an affidavit, substantially in the following form:
STATE OF COLORADO, _____ COUNTY, ss.

I do solemnly swear (or affirm, as the case may be) that at a meeting of the members of the (here insert the name of the society as known before incorporation), held at, in the county of, and State of Colorado, on theday of, A. D. 191..., for that purpose, the following persons were elected or appointed (here insert the names) trustees (or wardens, vestrymen, or officers of whatever name they choose to adopt, with powers and duties similar to trustees, according to the rules and usages of such society, church or congregation), adopted as its corporate name (here insert the name), and at said meeting this affiant acted as chairman (or secretary, as the case may be).

.....
(Name of affiant)

Subscribed and sworn to before me this.....day of
....., A. D. 191....

Such affidavit, or a copy thereof, duly certified by the recorder, shall be received as evidence of the due incorporation of such congregation, church or society.

Enlargement of Corporate Purposes.

In addition to matters required to be stated in the affidavit as above, any such corporation may insert therein any other lawful clause or clauses, which they may desire to exist as a part of their charter.—R. S. '08, § 1019.

[Section 44 referred to in above section is Sec. 1136 M. A. S.]

Sec. 1136 M. A. S. Incorporation of Synods, Conferences, Episcopates, Etc.

If any body of Christians has or shall have, according to its order or mode of government, an organization, whether known as synod, presbytery, conference, episcopate or other name, with ecclesiastical or spiritual jurisdiction over its members throughout this state, and its authorities shall desire to engage in works of education, benevolence, charity, and missions, which works shall be of like extensive operation and benefit, and not of limited or local service, and they shall deem an incorporation convenient for the more successful administration of said works, all or any of them, its said authorities, with such persons as they may associate with them, may cause such incorporation to be formed in the manner and with the powers hereinbefore provided for the incorporation of a church, congregation or society.—R. S. '08, § 1026.

The summary of the above sections is that the affidavit as to the action of the organization meeting made by its chairman or secretary when recorded becomes the charter of the corporation. This affidavit is filed for record like a deed, and when copied the paper is returned to the corporation, which is the better practice, although the statute does not necessarily call for more than a filing, in which case the original stays on file and a certified copy issues to the corporation.

Section 1136 M. A. S., which is cited in Sec. 1131 M. A. S., relates to incorporations such as synods or episcopates covering more than a single county. The language of said section 1136 M. A. S. is vague, but the sections taken together seem to mean that the affidavit of

meeting in case of such so-called "general incorporation" shall be filed with the Secretary of State instead of in the county recorder's office. A local organization, such as a church of a particular parish, files in the recorder's office only.

The last clause of section 1131 M. A. S., above printed, gives wide scope to enlarge or limit the purposes of the organization and is a privilege not granted to any class of business corporations.

Sec. 1132 M. A. S. Board Makes By-Laws Unless Reserved to the Larger Body.

The directors, trustees, wardens or vestrymen of any such corporation shall adopt necessary by-laws to provide for the election of directors, trustees, wardens or vestrymen and other officers, and for the proper government in all respects of such congregation, church or society, unless such corporation shall in its articles of incorporation reserve to itself the right to make and adopt such prudential by-laws as it may deem necessary to provide for the election of directors, trustees, wardens, or vestrymen and other officers, and for the proper government in all respects of such congregation, church or society.—R. S. '08, § 1020.

It will be noted that the above section covers the very material point as to whether the control of the church or society is to vest in its managing board or is to remain with the congregation or members of the society.

Corporations created under previous law may reorganize under the present Act.—Sec. 1135 M. A. S.

Section 1133 M. A. S. gives to universities and colleges power to increase or decrease the number of its directors or trustees without apparently filing any report of their action in any State or county office, unless this is implied, as we think it is, by necessary inference. By section 1138 M. A. S. universities and colleges are empowered to confer degrees.

Section 1134 M. A. S. refers exclusively to church titles, deeds to which it requires to declare the trust

under which held, and its language is so obscure that it must be closely studied in the light of the particular title to be conveyed.

Corporations of this class B are allowed to take and hold real and personal property by gift, devise or purchase.—Sec. 1137 M. A. S. The word trustee where used in the Act includes wardens, vestrymen, or such other officers as perform the duties of trustees.—Sec. 1165 M. A. S.

Amendment of Articles.

Sections 1150-1152 M. A. S. give the right to amend articles and prescribe the formula of proceedings in such case. These sections are limited by their title to "charitable" corporations only. But any corporation organized for "religious, educational or benevolent" purposes may amend under the terms of sections 1139-1141 M. A. S.

Churches.

In organizing a parish of the Roman Catholic church, the incorporators are supposed to conform to the decree of the third council of Baltimore held in 1884, No. 287.

The bishop of the diocese, the vicar general and the local pastor must be named among the trustees, and if, as usual, five is the number, the other two are laymen of the parish.

Charter—St. Peter's Church.

STATE OF COLORADO, CITY AND COUNTY OF DENVER, SS.

I do solemnly swear that at a meeting of the members of St. Peter's Congregation, held at the city and county of Denver, and State of Colorado, on the 31st day of August, A. D. 1917, for the purpose of becoming incorporate, the following persons were elected: (the Bishop), (the Vicar General), Richard Brady (the local pastor), and Dennis Sheedy and Joseph K. Mullen (two laymen of the congregation), trustees, and that said congregation adopted as its corporate name "The St. Peter's Church," and at said meeting this affiant acted as secretary.

The said trustees shall adopt such prudential by-laws as they may deem necessary for the election of their successors and other officers, and for the proper government in all respects of said church.

RICHARD BRADY,
Secretary.

Sworn and subscribed to before me this 31st day of August,
A. D. 1917.

My commission expires October 5, 1919.

[N. P. SEAL.]

Oliver L. Morton,
Notary Public.

Charter—Aurora M. E. Church.

STATE OF COLORADO, CITY AND COUNTY OF DENVER, SS.

I do solemnly swear that at a meeting of the members of the congregation of The Aurora Methodist Episcopal Church, held at the city and county of Denver, and State of Colorado, on the first day of September, A. D. 1916, the following persons, Wm. G. Evans, Charles H. Chase and Louis Hough, all of said city and county, were elected trustees, and that said congregation adopted as its corporate name, "The Aurora Methodist Episcopal Church," and that at said meeting this affiant acted as chairman.

The by-laws necessary for the election of the successors of said trustees and for the proper government in all respects of said church shall be made by the congregation; that is to say, by the communicating members of said church of adult age.

LOUIS HOUGH,
Chairman.

Jurat as above.

Any church has the alternative to incorporate according to the above formula or to organize as a joint stock company. See page 160.

C. Cemeteries.

Sec. 1142 M. A. S. May Incorporate With Certain Powers.

Any number of persons, not less than three may associate themselves together under the provisions of this Act, for the purpose of procuring and establishing a cemetery or place of sepulture; and being so associated, they shall upon compliance with the provisions of this Act, be a body politic and corporate; may sue and be sued; have a common seal which they may alter at pleasure; may purchase, hold and convey real and personal estate; may choose a president and other officers; may enact

by-laws for regulating the affairs of such corporation, not inconsistent with the laws of this state, and compel the observance thereof by suitable penalties, and may do any and all acts necessary and proper for the well ordering of the affairs of such corporation.—R. S. '08, § 1047.

Sec. 1143 M. A. S. May Acquire Land.

Any corporation organized under the laws of this State to establish and maintain a cemetery, or burial place for the dead, may acquire suitable and sufficient land therefor, in the manner provided by an act of the general assembly of the State of Colorado, entitled "An Act to provide for the exercise of the right of eminent domain," approved February 12, 1877, and the amendments thereof.—R. S. '08, § 1048.

[The Act and amendments referred to are the Eminent Domain chapter of M. A. S.]

Sec. 1144 M. A. S. Land Surveyed and Platted.

Such corporation shall cause its land, or such portion thereof as may, from time to time, become necessary for that purpose, to be surveyed into lots, avenues and walks, and platted; and the plat of ground as surveyed shall be acknowledged by some officer of the corporation, and filed in the office of the recorder of the county in which the land is situated. Each lot shall be regularly numbered by the surveyor, and such number shall be marked on the plat.—R. S. '08, § 1049.

Sec. 1145 M. A. S. Disposition of Proceeds of Sales of Lots.

The net proceeds arising from the sale of lots by such corporation, and all other income and revenue thereof, after paying for cemetery ground, shall be exclusively applied, appropriated and used in improving, preserving and embellishing the cemetery and its appurtenances, and to paying the necessary expenses of the corporation, and shall not be appropriated to any purpose of profit to the corporation or its members.—R. S. '08, § 1050:

The Cemetery Subdivision of the Corporation Chapter contains eight sections, the first of which [§ 1142 M. A. S.] was one of the sections of the General Incorporation Act of 1877 and contemplated the filing of articles same as required of any business corporation although it will be noticed that it does not prescribe any special item what-

ever to be inserted in the articles. The other sections [§ § 1143-1149 M. A. S.] were enacted later and provided for "not-for-profit companies."

The "not-for-profit" class are forbidden to pay out any money except for expenses or improvements, which necessarily implies that they cannot declare a dividend.—Sec. 1145 M. A. S.

This makes two classes of cemetery companies, although incorporated under the same formula, and we suggest that the election should be made at the outstart by adding, if it is intended to claim the exemptions allowed to a not-for-profit company, to its article 2:

This company is organized under section 1142 of Mills Annotated Statutes of Colorado as a "not-for-profit company."

In the not-for-profit class the grounds are exempt from taxation and the lots from execution and attachment except for purchase money [§ 1147 M. A. S.], but in the latter class the sold lots only are exempt from taxation and attachment.

They have the right to condemn land, and whether acquired by deed or condemnation must file a plat of the ground in the recorder's office.—Secs. 1143; 1144 M. A. S. Section 1146 M. A. S. refers to the status of interments in the same ground before the incorporation.

Corporate Life.

There seems to be no limitation on the corporate life of any sort of not-for-profit company, and we apprehend that a cemetery organized as such would have a perpetuity such as its purpose so evidently suggests, but we cannot say that a cemetery company organized for profit has a corporate life beyond the usual twenty years.

Articles of Cemetery Company.

ARTICLE 1. The name of said company shall be *The Alvarado Cemetery Company*.

ARTICLE 2. The objects for which said company is created are for the purpose of procuring and maintaining a cemetery and place of sepulture at Alvarado, near Georgetown, in the

county of Clear Creek, State of Colorado, and sepulture may include crematories and other lawful disposition of the bodies of the dead.

Preamble, other articles and acknowledgment as on page 39, substituting "perpetual" for the words "twenty years" if organized as a not-for-profit company.

D. Joint Stock Companies, for Religious, Educational or Benevolent Purposes.

Sec. 1154 M. A. S. Organized by Meeting and Filing of Affidavit.

Any joint stock company or association which may have been heretofore or may be hereafter organized in this State for religious, educational or benevolent purposes, may be incorporated under this Act in the following manner, to-wit: By electing or appointing, according to its usages or customs, at any meeting held for that purpose, two or more of its members as directors, trustees, wardens or vestrymen, or other such officers whose powers and duties are similar to those of trustees, as shall be agreeable to the usages and customs, rules and regulations of such congregation, church or society, and may adopt a corporate name, and upon the filing of the affidavit, as hereinafter provided, it shall be a body politic and corporate by the name so adopted.
—R. S. '08, § 1034.

Sec. 1155 M. A. S. Recorded Affidavit of Chairman Becomes the Charter of Joint Stock Company.

The chairman or secretary of such meeting shall, as soon as may be after such meeting, make and file in the office of the recorder of deeds in the county in which such congregation, church or society is organized, an affidavit, substantially in the following form:

STATE OF COLORADO, _____ COUNTY, SS.

I do solemnly swear (or affirm, as the case may be) that at a meeting of the members of the (here insert the name of the society as known before the incorporation), held at in the county of....., and State of Colorado, on the..... day of....., A. D. 191..., for that purpose, the following persons were elected (or appointed) trustees (or wardens, vestrymen or other officers or whatever name they choose to adopt), with powers and duties similar to trustees, according to the rules and usages of such society, church or congregation,

viz.: (here insert the names); that at such meeting, such society, church or congregation adopted as its corporate name (here insert the name); that the amount of the capital stock of such society, church or congregation is.....dollars, divided into.....shares of.....dollars each, and that at such meeting this affiant acted as chairman (or secretary, as the case may be).

.....
(Name of affiant.)

Subscribed and sworn before me this.....day of
....., A. D. 191....

.....
Such certificate, or copy thereof, duly certified by the recorder, shall be received as evidence of the due incorporation of such society, church or congregation.—R. S. '08, § 1035.

Form of Joint Stock Charter.

STATE OF COLORADO, CLEAR CREEK COUNTY, SS.

I do solemnly swear that at a meeting of the members of *The St. Patrick's Benevolent Society*, held at Georgetown, in the county of Clear Creek and State of Colorado, on the 17th day of March, A. D. 1917, for that purpose, the following persons were elected trustees according to the rules and usages of such society, viz.: James A. Noone, H. R. McCabe and John J. White.

That at such meeting such society adopted as its corporate name, *The St. Patrick's Benevolent Society*.

That the amount of the capital stock of such society is One Thousand Dollars, divided into ten shares of One Hundred Dollars each.

And that at such meeting this affiant acted as secretary.

JAMES A. NOONE.

Subscribed and sworn to before me this 17th day of March, A. D. 1917.

(SEAL)

John Tomay,
Notary Public.

My commission expires.....

It will be noted that the above form does not state the objects of the society, no such requirement being found in the statute.

It follows strictly the terms of Sec. 1155 M. A. S. but the law makes this skeleton statement evidence of "due incorporation." The constitution should state the objects,

and by-laws under the next section will of course be adopted.

The above form will answer for a church or any other organization which comes within the meaning of the words, "Religious, Educational or Benevolent Purposes."

Sec. 1156 M. A. S. By-Laws.

The directors, trustees, wardens or vestrymen of any such corporation shall adopt necessary by-laws to provide for the election of directors, trustees, wardens or vestrymen, and other officers, and for the proper government, in all respects, of such congregation, church or society.—R. S. '08, § 1036.

Sec. 1157 M. A. S. Property Vests in Corporation.

Upon the incorporation of any such congregation, church or society, all real and personal property held by any person or trustee for the use of the members thereof shall immediately vest in such corporation and be subject to its control, and may be used, mortgaged, sold and conveyed the same as if it had been conveyed to such corporation by deed.—R. S. '08, § 1037.

Sec. 1158 M. A. S. Powers of Such Joint Stock Corporation.

Corporations formed under this Act shall be bodies corporate and politic in fact and in name, by the name stated in such affidavit, and by that name have succession for the period for which they are organized; may sue and be sued in any court of law or equity in this State; may have a common seal, which they may alter or renew at pleasure, by filing an impression of the same in the office of the clerk and recorder of the county in which any such corporation may be formed under this Act; may own, possess and enjoy so much real and personal estate as shall be necessary for the transaction of their business, whether acquired by purchase, grant, devise, gift or otherwise; and may from time to time sell and dispose of the same, or any part thereof, when not required for the use of the corporation.

They may borrow money and pledge their franchises and property, both real and personal, to secure the payment thereof, and may have and exercise all the powers necessary and requisite to carry into effect the object for which they may be formed under this Act.—R. S. '08. § 1038.

Sec. 1159 M. A. S. Shares of Stock—Limit of Amount—Forfeiture.

The shares of stock shall not be less than ten dollars nor more than one hundred dollars each, and shall be deemed personal property and transferable as such in the manner provided by the by-laws; subscriptions therefor shall be made payable to the corporation, and shall be payable in such installments and at such time or times as shall be determined by the directors or trustees, or other similar officers. The by-laws may provide for a forfeiture or sale of stock, on failure to pay the installments or assessments that may from time to time become due, but no forfeiture of stock, or of the amounts paid thereon, shall be declared against any estate, or against any stockholder, before demand shall have been made for the amount due thereon.—R. S. '08, § 1039.

Sec. 1160 M. A. S. Board of Directors.

The corporate powers of any such corporation shall be exercised by a board of directors, trustees, or other similar officers, in the manner and for the time which may be prescribed in the constitution and by-laws of such corporation, provided the same shall not be in conflict with any of the provisions of this Act or of the laws of this State.—R. S. '08, § 1040.

Sec. 1161 M. A. S. Election of Directors—Holdovers.

In case it should happen at any time that an election of directors or trustees, or other similar officers, shall not be held on the day designated by the constitution or by-laws, when it ought to have been held, the company for that reason shall not be dissolved; but it shall be proper to elect such directors, trustees, or other officers on any subsequent day as shall be prescribed by the constitution or by-laws.—R. S. '08, § 1041.

Sec. 1162 M. A. S. Liability of Stockholders.

Each stockholder shall be liable for the debts of the corporation to the extent of the amount that may be unpaid upon the stock held by him, to be collected in the manner herein provided. Whenever any action is brought to recover any indebtedness against the corporation it shall be competent to proceed against any one or more of the stockholders at the same time, to the extent of the balance unpaid by such stockholders upon the stock owned by them respectively, as in cases of garnishment.—R. S. '08, § 1042.

Subdivision XVII of the Corporation Chapter of Mills Annotated Statutes entitled "Joint Stock Companies," Secs. 1154-1166 M. A. S., is confined entirely to companies organized under our Subdivision D.

The statutory affidavit contained in the above section 1155 M. A. S. in the last paragraph of the section, called a "Certificate," may be either filed or both filed and recorded, the same as observed concerning the like affidavit in class B on page 152.

This subdivision D is confined to the class of companies mentioned in the above title and they are not supposed to be organized for profit, but there is nothing in the chapter forbidding their declaring dividends such as applies to class A. There are certain corporations, such as hospitals, libraries, colleges, which may under certain rare conditions earn money in excess of the expenses, which can rightfully be divided among the stockholders.

But the main object of organizing as a joint stock company is to be able to issue to each donor or founder of this class of companies a stock certificate showing the amount of his interest or subscription, which always has a certain possible value, and may be assignable either to create a substituted beneficiary or for a pecuniary consideration.

This Act then proceeds that the directors, trustees, wardens or vestrymen shall adopt necessary by-laws to provide for the filling of their own offices and other offices and the proper government of the congregation, church or society.—Sec. 1156 M. A. S.

And that upon such incorporation any property held in trust for the use of its members shall immediately vest in the corporation.—Sec. 1157 M. A. S.

But this statutory vesting no lawyer will advise to take advantage of. The trustee should convey the property to the corporation by deed when it becomes incorporated.

Section 1158 M. A. S. is the usual grant or declaration that such body becomes a corporation and may own and hold property necessary for its corporate functions, with power to borrow money and pledge its franchises and property and to convey the same when not needed for the use of the corporation.

The shares of stock must not be less than \$10 nor more than \$100, payable in installments as the board may require, and the by-laws may provide for forfeiture for non-payment of installments after demand—Sec. 1159 M. A. S.

Sections 1160-1162 M. A. S. provide that the board shall exercise the corporate powers "which may be prescribed in the constitution and by-laws." That failure to hold election on proper days shall not vacate their offices, and each stockholder is made liable for the debts of the company to the extent of the balance unpaid upon the stock held by him.

After the last installment of stock has been paid the president and a majority of the board are required [§ 1163 M. A. S.] to record with the county clerk a verified certificate to that effect, the same without change as the form for business corporations on page 213.

They are allowed to take property in exchange for stock the same as business corporations.—Sec. 1164 M. A. S.

Sec. 1165 M. A. S. Church May Re-incorporate—Directors and Trustees, Defined.

Any congregation, church or society, heretofore incorporated under the provisions of any law for the incorporation of religious, educational or benevolent societies, may become incorporated under the provisions of this Act, in the same manner as if it had not been previously incorporated; in which case the new corporation shall be entitled to and invested with all the real and personal estate of the old corporation, subject to all its debts, contracts and liabilities. The words "Directors" and "Trustees," whenever used in This Act, shall be construed to include wardens, vestrymen, or such other officers as perform the duties of trustees or directors.—R. S. '08, § 1045.

Sec. 1166 M. A. S. Incorporation of Synods, Conferences and Episcopates.

If any body of Christians, or other religious denomination, has or shall have, according to its mode of government, an organization, whether known as synod, presbytery, conference, episcopate, or other name, with ecclesiastical or spiritual jurisdiction over its members throughout this State, and its authorities shall desire to engage in works of education, benevolence, charity and missions, and shall deem an incorporation convenient for the more successful administration of such works, all or any of them, its said authorities, with such persons as they may associate with them, may cause such incorporation to be formed in the manner and with the powers hereinbefore provided for the incorporation of a church, congregation or society.—R. S. '08, § 1046.

Any church which has incorporated under the formula for class B can become a joint stock company as the above section 1165 M. A. S. provides.

Section 1166 M. A. S. refers exclusively to the larger clerical aggregations known as dioceses and synods. Although the section uses the words "throughout the State," we have no doubt that construing the entire Act together an organization confined to one or more counties could organize as a joint stock company.

Co-operative Associations.

By Acts of 1913, p. 220 [§§ 1166a-1166e M. A. S.] and 1915, p. 166 [§§ 1166f-1166p M. A. S.], a special form of incorporation is provided for persons engaged in the production, preservation, drying, canning, shipping or marketing of agricultural, viticultural, horticultural, dairy or apiarian products, or either or any of them, or other products of the soil or farm, or in the raising and marketing of livestock. The later Act declares that "its business shall not be carried on for profit" and has many details not applicable either to ordinary business corporations or to "not-for-profit" companies. To incorporate under these Acts requires close attention to their text and their whole purport is simply to form a unique and useless form of quasi corporate organization.

CHAPTER XXII.**ORGANIZATION MEETING.**

As soon as convenient after the articles are filed the directors should hold their first meeting, at which certain proceedings are almost a matter of course to comply with the statutes and to place the company in order.

1. The directors elect the president and other officers.
2. Adopt by-laws if, as is usually the case, the articles contain the clause authorizing the by-laws to be made by the board. If the articles do not so provide, the by-laws are made at the stockholders' meeting.

At the outstart of the company, directors exist by virtue of their being named in the articles.—*Humphreys v. Mooney*, 5 Colo. 283. But stockholders do not exist until stock has been issued, and stock cannot be issued till ordered by the board of directors. Consequently the first meeting must be by the board of directors, but as soon as one or more shares have been issued to each director a stockholders' meeting can be called whenever desired.

3. Adopt seal. This is usually done by by-law. There is a common impression that the company is required to file an impression of their seal with the Secretary of State, but there is no statute mandatory to this effect except when the seal is altered.

4. Authorize the secretary to purchase stationery and the necessary books required either by statute or as essential to preserve orderly records and accounts.

5. Fix the price of treasury stock, or accept such promoters' proposition as has been kept in view as the plan of launching the company and advancing to the ultimate goal of profits.

6. Adopt form of stock certificates and direct terms of issue.

All these items and others are covered in the following minutes of a supposed company :

Minutes of First Board Meeting.

Of the Board of Directors of The Booth Mercantile Company, held at the office of the company at Kreming, Grand county, Colorado, January 2, 1917. Present: Henry P. Lowe, Thomas L. Wood, F. C. Webb, David P. Howard and W. W. Booth. On motion Henry P. Lowe was elected chairman and David P. Howard secretary of the meeting.

On motion, duly seconded, the articles of incorporation, as filed in the office of the Secretary of State and in the office of the county clerk of Grand county, were accepted as the articles of incorporation of said company.

Election of Officers.

On ballot taken, Henry P. Lowe was elected president of the company, W. W. Booth was elected vice-president, David P. Howard was elected secretary, and F. C. Webb was elected treasurer of the company.

Routine and Miscellaneous.

The secretary reported that he had paid out \$50 attorneys' charges, \$15 for seal, stock book and stationery, \$52.50 to Secretary of State and sundries \$2, as per itemized bills presented. Total, \$119.50. And on motion, duly seconded, it was ordered that a check be drawn in payment of same out of first proceeds of stock sales.

On motion, duly seconded, the secretary was directed to order 1,000 letterheads and envelopes printed (or engraved); also, day book and ledger and stock ledger.

On motion, duly seconded, one share of stock to each director, on payment of its face value, was ordered to be issued.

On motion, duly seconded, it was ordered that the written offer of W. W. Booth to convey to the company the store and warehouse now owned by him, together with his entire stock of goods, accounts outstanding and good will, clear of encumbrance and free from debt, for 10,000 shares of the company's stock, be and the same is accepted, and said amount of stock is ordered to be issued to him upon delivery to the company of deed and bill of sale for said property, to be drawn or approved by Arthur R. Morrison, its attorney.

On motion, duly seconded, the treasurer was authorized to sell not to exceed 10,000 shares of the treasury stock at par, the proceeds thereof to be used for the purpose of increasing the stock in trade and enlarging the buildings and warehouses of the company.

On motion, duly seconded, it was ordered that all the preferred stock of the company be set aside and held in the treasury, to be issued and used as collateral to a proposed bonded loan on the company's property.

On motion, duly seconded, the stock book produced by the secretary, containing 1,000 blank certificates of stock of The Booth Mercantile Company, was accepted as the stock book of the company, and it was ordered that all certificates issued should be taken from said book in order as numbered when a stock issue should be authorized by this board.

On motion, duly seconded, it was ordered than an account be opened with the International Trust Company, Denver, and that all outlays of the company be made by checks on that bank, signed by the treasurer and countersigned by the president.

On motion, duly seconded, it was ordered that the treasurer give bond, secured by some reliable surety company, in the sum of \$5,000, to be approved by the attorney of this company, and presented at the next meeting.

Adoption of By-Laws.

On motion, duly seconded, the following by-laws were adopted:

(Or, Mr. Wood moved that a set of by-laws, which he now presented, should be adopted. Mr. Howard moved as an amendment that each of the by-laws should be separately read and voted upon, which amendment, being seconded, was carried, and after vote taken on each by-law the following were adopted:)

By-Laws.

SECTION 1. *Annual Stockholders' Meeting.*—The annual stockholders' meeting shall be held on the first Monday in January, 1918, and on the first Monday in January of each year thereafter at the hour of 10 o'clock A. M.

SEC. 2. *Special Meeting of Stockholders.*—A special meeting of the stockholders may be called at any time by resolution of the board, or upon request of the holders of one-fourth of the stock, of which meeting ten days' notice shall be given by publication and thirty days' notice by personal service or mailing to each stockholder.

SEC. 3. *Regular Board Meetings.*—A regular meeting of the board shall be held at 2 o'clock p. m. on the first Monday of each month.

SEC. 4. *Special Meetings of Directors.*—Meetings of the directors may be held at any time upon call by the president or

vice-president after at least one day's notice to each member of the board. Upon refusal of the president or vice-president to call a meeting any two members of the board may call a meeting upon at least three days' notice in writing to each member of the board.

SEC. 5. *Officers—Elections.*—The officers of this company shall be a president, vice-president, secretary and treasurer, to be chosen from the members of the board of directors.

The above designated officers shall be elected by ballot at the first meeting of the board of directors, to hold until the next annual meeting of stockholders, and until their successors are elected.

SEC. 6. *Salaries.*—No compensation or salary shall be allowed to any member of the board or to any officer chosen by the board from its membership until after a first dividend shall have been paid, when their compensation, if any, shall be fixed by resolution of the board.

SEC. 7. *Duties of President.*—The president shall preside at all meetings of the board of directors. He shall sign all certificates of stock, all notes and obligations, and all contracts or other papers requiring the corporate seal, and shall in general be the chief executive officer of the company, and shall present a report of the general conduct and transactions of the company at the annual stockholders' meeting.

SEC. 8. *Vice-President.*—The vice-president shall act at all directors' meetings in the absence of the president from the meeting, and shall perform any executive act required of the president when the president is absent from the county or is for any other reason unable to act.

SEC. 9. *Secretary.*—It shall be the duty of the secretary to keep the minutes of all meetings of the board; to keep custody of the corporate seal and to affix the same to all certificates of stock and contracts and conveyances requiring the same. To carry on all correspondence of the company and to keep a record of all stock issues and transfers. To give notice of all meetings of the board and of the stockholders, and he shall keep record of the name and postoffice address of each stockholder, and make written report at the annual meeting of stockholders.

SEC. 10. *Treasurer.*—The treasurer shall have charge of the funds of the company, after filing bond, as required by section 11 of these by-laws, and shall pay out the same only by check signed by himself and countersigned by the president. He is required to keep written books of account, showing all receipts

and expenditures, and shall deposit in such bank as the board of directors may by resolution select. He shall render an account to the stockholders at their annual meeting and to the board of directors whenever by resolution so requested, and his books shall be open at all times to the inspection of any other officer of the company.

SEC. 11. *Treasurer's Bond.*—The treasurer of the company shall be required to file a bond, to be approved by the attorney of the company, in the sum of \$5,000, signed by a surety company, for the faithful performance of his duties and to account for all moneys that shall come to his hands.

SEC. 12. *Vacancies.*—Any vacancy in any office shall be filled by election by ballot at the next meeting of the board after the vacancy exists, and a vacancy among the members of the board shall be filled by election by ballot by the remaining members of the board, provided that if the vacancies reduce the membership of the board so that no quorum can meet, a special meeting of the stockholders shall be called to fill such vacancies.

SEC. 13. *Stock.*—The subscribers to the capital stock of this company shall be entitled to certificates of their shares, duly signed by the president, countersigned by the secretary and bearing the corporate seal. The certificates of stock shall be numbered and registered as they are issued.

SEC. 14. *Preferred Stock.*—Of the stock issue of this company, ten thousand shares shall be preferred stock, entitled to a dividend of six per cent per annum, to be paid out of the net earnings of the company before any dividend shall be declared in favor of the common stock. But after the payment of such six per cent they shall not pro rate with the common stock.

SEC. 15. *Calls—Forfeiture.*—All stock upon which an assessment shall be levied by order or resolution of the board of directors, when such installment shall remain unpaid after demand in person, or by mail has been duly made and the time allowed by law for its payment has elapsed, shall be forfeited to the company.

SEC. 16. *Transfers.*—No transfer of stock shall be made, except upon surrender of the original and the written assignment of the holder, or his written request for reissue, except in case of lost certificate. In case of loss of original certificate the secretary shall require proof of such loss and may, as he sees fit, require an indemnity bond.

SEC. 17. *Quorum—Chairman.*—A majority of the board shall constitute a quorum, and in the absense of both president

and vice-president the members present shall choose one of their number to preside at the meeting.

SEC. 18. *Order of Business*.—After organization at stockholders meeting, the order of business shall be: 1. Reading minutes of the last meeting. 2. Hearing reports from the president, secretary and treasurer, respectively. 3. Miscellaneous business. 4. Election of officers.

SEC. 19. *Subordinate Officers*.—The board of directors shall have authority to hire a cashier, a bookkeeper, clerks, solicitors, watchman and such other subordinate officers or employes as they may see fit to conduct and increase the business of the company.

SEC. 20. *Proxies*.—No proxy will be allowed to vote at stockholders' meeting unless such proxy is submitted to the secretary for registry more than forty-eight (48) hours before the hour set for the meeting, whether annual or special.

SEC. 21. *Dividends*.—No dividend shall be declared while any debts exist against the company (except its bonded indebtedness), nor until the net earnings of the company justify the ordering of the payment of dividend, which shall be by order of the board of directors.

SEC. 22. *Seal*.—The corporate seal shall consist of the name of the company in a circle, with the words "Colorado" and "Seal" and the year of incorporation (1917) within the circle.

SEC. 23. *Amendment*.—These by-laws may be amended at any regular meeting of the board of directors, but not at any special meeting, unless called for that specific purpose, by a two-thirds vote of the entire board.*

On motion meeting adjourned subject to call.

DAVID P. HOWARD,
Secretary.

CHAPTER XXIII.

PROMOTERS.

In *Cox v. Nat. Coal Co.*, 61 W. Va. 291, 56 S. E. 494, a promoter is thus defined: "A 'promoter' is a person

*The by-laws vary so essentially that it is impossible to draft any form all sections of which can apply to all sorts of companies, and the above is merely a suggestion of their general scope. For by-laws of a mining corporation, see *Mining Rights*, 14th Ed., p. 368; 15th Ed., p. 398.

who brings about the incorporation and organization of a corporation, who brings together the persons who became interested in the enterprise, aids in procuring subscriptions, and sets in motion the machinery which leads to the formation of the corporation itself."

"A person is a promoter who holds in his own name and right options on certain coal in place and organizes a corporation for the ostensible purpose of developing, mining, shipping and marketing the coal, the stockholders and directors of which corporation hold merely 'qualification stock,' and the holder of the options selling the same to the corporation."

He is supposed to be acting for his own benefit by means of the corporation which he is exploiting, and may be legitimately compensated by compensation in money or stock by corporate action to that effect. But, without such corporate action it is generally held that the company is under no implied liability to him. And whether the corporation assumes their contracts or not the promoters are personally liable for debts incurred preliminary to organization.—*Hersey v. Tully*, 8 Colo. App. 110, 44 Pac. 854.

Although there is nothing illegal in promoters obtaining property at one price and turning it over to the corporation at an advance, yet they are held to the highest degree of fidelity both to the company and its stockholders.

Where a promoter of a corporation has a secret contract for the purchase of property, the terms of which are more favorable than those disclosed by him to the stockholders, or an agreement that he shall have stock in the corporation without paying therefor, any advantage which he thereby obtains is a fraud on the other stockholders and upon the corporation, for which he may be compelled to account without rescission of the contract.—*Wills v. Nehalem Coal Co.*, 52 Ore. 70, 96 Pac. 529.

Promoters of a company have the right to give its stock in settlement of hostile claims or for bonus for services in raising funds.—*Cranney v. McAllister*, 35 Utah 550, 101 Pac. 985.

An agreement among those proposing the organization of a corporation, as to commissions to be paid to parties who assist in the project is not binding upon such corporation, when organized, unless it expressly or impliedly assumes the liability.—*Plains Iron Works Co. v. Haggott*, 68 Colo. 121, 188 Pac. 735.

Prospectus.

When the corporation and its promoter issue a prospectus which is knowingly false in its presentation of alleged facts both the directors and promoters may be held personally liable to those who are so induced to purchase stock.—*Morgan v. Skiddy*, 62 N. Y. 319, 7 M. R. 74; *Pittsburg M. Co. v. Spooner*, 74 Wis. 307, 17 M. R. 226.

The vendors of property are not liable for false statements in prospectuses made by their corporate vendees where they took no active part in circulating them.—*Wiser v. Lawler*, 189 U. S. 260, 22 M. R. 630.

CHAPTER XXIV.

BOARD OF DIRECTORS.

Sec. 997 M. A. S. Board of Directors—Cumulative Vote in Electing—Meeting—Vacancy—Directors of Mining Property Submit Question of Encumbering.

The corporate powers shall be exercised by a board of directors or trustees, which may be any number not less than three, as shall be fixed by and stated in the certificate of incorporation, who shall respectively be stockholders in said company. The Board of Directors may by resolution passed by a majority of the whole board designate two or more of their number to constitute an Executive Committee, which shall have and exercise, subject to such limitations, if any, as may be prescribed

by the by-laws or by resolution of the board of directors, the powers of the board of directors in the management of the business and affairs of the company. Provided, such executive committee shall only act at such times as the board of directors are not in session and in no case to the exclusion of the board of directors at any time to act as a board upon any business of the corporation. The directors shall (except the first year) be annually elected by the stockholders, or such class or classes thereof as by the terms of the articles are entitled to vote for the election of directors, at such time and place as shall be directed by the articles or by-laws of the company; and public notice of the time and place of holding such elections, and also of all general or special meetings, shall be published at least once in a newspaper of general circulation, not more than thirty and at least ten days prior to the date set for such meetings, in or nearest to the place in which the principal office of the company shall be kept as specified in its articles of incorporation and by delivering personally or depositing in the post office at least thirty days before such meeting a notice properly addressed to each stockholder of such classes of stock as are entitled to vote thereat, signed by the president or secretary, stating the time and object of said meeting; and no business shall be transacted at any special meeting except such as shall be mentioned in said notice; if, however, any stockholder shall fail to furnish the secretary with his correct post office address, he shall not be entitled to such separate notice. Whenever any notice is required to be given under the provisions of this chapter or under the provisions of the articles or by-laws of any corporation organized under the laws of Colorado, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before, at or after the time stated therein, shall be deemed equivalent thereto. Elections of directors or trustees shall be made by such of the stockholders entitled to vote thereat as shall attend for that purpose, either in person or by proxy; provided, a majority of the stockholders entitled to vote thereat shall be represented; and if a majority of such voting stock shall not be represented, such meeting may be adjourned by the stockholders present for a period not to exceed sixty days at any one adjournment.

When it is found that a majority of the stock entitled to vote thereat is represented at such meeting or adjourned meeting, the stockholders shall proceed to nominate the number of directors, trustees or managers to be elected, each stockholder entitled to vote thereat having the right to nominate. The elec-

tion shall be by ballot, on which each person voting shall write the names of as many persons as are to be elected from the nominees. Each stockholder shall have the right to vote in person or by proxy for the number of shares, of a class entitled to vote, standing in his or her name on the books of the company, and in balloting for directors he or she may vote said number of such shares for as many directors, trustees or managers as are to be elected, or, in case the by-laws or the certificate of incorporation of the company permits cumulative voting, he or she may cumulate such shares and give one candidate as many votes as the number of directors multiplied by the number of his or her shares of stock shall equal, or to distribute them on the same principle among as many candidates as he or she may desire; and the person having the highest number of votes in consecutive order shall be declared elected to the board of directors, trustees or managers for that year, and such directors, trustees or managers shall not be elected in any other way. And when any vacancy shall happen among the directors or trustees, by death, resignation or otherwise, it shall be filled for the remainder of the year as shall be provided by the by-laws of said company. In all corporations hereafter formed under the laws of the state the articles of incorporation shall state whether or not cumulative voting shall be allowed. Existing corporations whose articles do not so state, shall within one year from the date of approval of this act, amend their articles of incorporation so as to show whether or not cumulative voting is allowed, and on failure to do shall be deemed to have adopted the cumulative system of voting for directors, and these provisions shall apply to all corporations organized for profit.

The board of directors or trustees of a mining or manufacturing corporation shall not have power to encumber the mines or plant of such corporation, or the principal machinery incident to the production from such mine or plant until the question shall have been submitted at a proper and legal meeting of the stockholders, and a majority of all the shares of stock shall have been voted in favor of such proposition; and any mortgaging or encumbering of such property, without such consent, shall be absolutely void, and the vote upon such proposition shall be entered on the minutes of the corporation; Provided, however, that a lease for a period of not exceeding five years shall not be deemed an encumbering of such property.—L. '21, p. 198, § 4, amending L. '19, p. 351, § 6, which amended R. S. '08, § 865.

The Act of 1895 in its title purported merely to amend section 242 of the General Statutes. The text of

section 242 was confined to fixing the number of directors of business corporations and regulating their election at the annual meeting. A separate section at that time fixed the number of directors in mining companies.

The amending Act of 1895 brought in the subject of cumulative ballots and its third paragraph abruptly jumped to the subject of mortgages by mining and manufacturing companies.

It raised at once on its face the question as to how far an Act merely purporting to amend a single section could go, in attempting to cover topics not mentioned or even hinted at in the old section. But in the case of *Carlsbad Co. v. New*, 33 Colo. 389, 81 Pac. 34, the Court said: "The case presents no fairly debatable constitutional question." It is not to be reconciled with many cases which hold that the body of the amending section must be germane to the subject-matter of the section amended.

This *Carlsbad* case has been squarely overruled on its principal point in the very ably reasoned case of *Dillon v. Myers*, 58 Colo. 492, 146 Pac. 268, but as the section has again been amended in 1915 as above printed, it may be considered that all it says in regard to new matter, to-wit: number of directors, cumulative voting and mortgages is good statutory law, that is to say, no longer open to the constitutional objection as to its title.

The important changes by the 1921 amendment are:

1. To require every corporation to insert a new article, to-wit: concerning cumulative voting.
2. The final proviso of the text excepting five year leases from its provisions.

We are constrained to the opinion that all the terms of the section apply to mining and manufacturing companies as well as to all other classes of business corporations and that it repeals section 1111 M. A. S. as to the number of directors in a mining company and on all other points where the two sections differ.

The text of Sec. 1111 M. A. S. above referred to and which Sec. 997 M. A. S. assumedly abrogates is as follows:

Sec. 1111 M. A. S. Directors—Election—Notice.

The stock, property and concerns of any company organized under the provisions of this Act shall be managed by not less than three (3) nor more than nine (9) directors, who shall respectively be stockholders in said company, and who shall, except the first year, be annually elected by the stockholders, at such time and place as shall be directed by the by-laws of the company; and public notice of the time and place of holding such elections shall be published not less than ten (10) days previous thereto, in a newspaper published in the place where the principal office of the company is located, if there be such a newspaper, and if not, by personal notice, as provided in section ninety-five (95) of this Act; and the election shall be had by such of the stockholders as shall attend for that purpose, either in person or by proxy; *Provided*, A majority of the stock be represented. All elections shall be by ballot, and each stockholder shall be entitled to as many votes as he holds shares of stock in said company, and the persons receiving the greatest number of the votes cast shall be elected.—R. S. '08, § 977.

[Section 95 referred to is section 1113 M. A. S.]

Minutes of Regular Meeting of the Board.

OFFICE OF

THE SEVEN DEVILS MINING COMPANY,

Silverton, Colorado, October 4, 1916.

Board met at 2 p. m., this being the day and hour for regular meeting fixed by the by-laws.

Present: William N. Vaile, John W. May and Tyson S. Dines, a majority of the board, the vice-president in the chair and the secretary present.

The minutes of the last meeting of the board were read, and there being no objection, the secretary was directed to note that they were approved; (or, on motion, duly seconded, the minutes were approved.)

The chair then called for the report of the secretary, which was read, showing that an offer had been received from the Royal Gorge Smelter looking to a contract for purchase of all the ores of this company. Also, reported transfer of 7,150 shares of stock on the books since last meeting. Report ordered to be kept on file.

The treasurer read report, showing receipts, \$8,200.50; expenditures, \$7,200, since last meeting. Report filed with the secretary.

On motion, John W. May was appointed a committee of one to confer with the manager of the Smelter Company with reference to its offer, and to report specially to the chair, who promised to call a special meeting on its receipt.

On motion, duly seconded and carried after discussion, the manager was directed to purchase new pumping plant and hoist at the price not to exceed \$4,000, the attorney for the company to draw or approve written contract for the same.

On motion, the treasurer was directed to draw check to John Maguire for \$300 in full for injuries received in the mine while in the employ of the company, the release to be drawn or approved by the said attorney.

On motion adjourned subject to call.

JOHN W. MAY,
Secretary.

Where the annual meeting of a private corporation for the election of directors is not held upon the day appointed by the by-laws, a special meeting for the election can be called only by the directors, or by two stockholders. An election at a special meeting called by the president, under authority of the by-laws, is void, unless every stockholder is present and consents to proceed to an election.—Grant v. Elder, 64 Colo. 104, 170 Pac. 198.

Directors' Meeting.

Where all are present and act all previous notice is waived. As a rule inaccessible members need not be notified. It has been held that a quorum may act where there is no by-law requiring notice to all. But in general, every director is entitled to notice either by mail or in person where there is no by-law or statute requiring him to take notice. And the transactions of meetings without such notice are voidable but not void. The complications arising from action taken without legal notice are endless and the only safe rule is to notify all and in emergency cases where the notice cannot be given in time the validity of the meeting will be upheld when no

statute is violated. No one case can cover the innumerable shades which this question may assume, but in *Whitehead v. Hamilton Rubber Co.*, 52 N. J. Eq., the rule is fairly stated.

No notice is required of the holding of regular meeting of directors provided for in the by-laws.—*Gumaer v. Cripple Creek Co.*, 40 Colo. 1, 90 Pac. 81.

Minutes of Special Meeting.

OFFICE OF
THE KINGFISHER MINING COMPANY.
No. 210 Boston Building, Denver, Colo.

December 27, 1916.

Special meeting of the board of directors called pursuant to notice in writing served on each director more than 24 hours before the hour of meeting, to consider and act upon the grant of right of way to The Central Colorado Power Company.

Present—John H. Gower and Nathaniel M. Bass, being a quorum of the board, the remaining absent director having been duly notified as required by the by-laws.

The minutes of the last meeting of the board were read and there being no objection were approved.

The following resolution was moved, seconded and carried by the votes of the two members present:

Resolved, That the president is hereby authorized to make, execute, deliver and acknowledge, and the secretary to attest and attach the common seal to the deed of our corporation to The Central Power Company, conveying right of way across all claims of this company on the Snake river in Summit county, Colorado, with all the usual covenants, and any special covenants, such as our attorney may approve, for the consideration of one hundred dollars.

This being all the business brought before the meeting, on motion it was adjourned subject to call.

JOHN H. GOWER,
Secretary.

Request for Special Meeting.

Dumont, Colo., July 8, 1917.

To E. J. Nolds, President of The Great Lucky Buck Gold Mining and Milling Company.

The undersigned holders of one-tenth of the stock of the said company hereby request you as its president to call a spe-

cial meeting of the board of directors to fix the selling price of its treasury stock, and for the consideration of such other business as may be brought before it.

J. WILLARD GIBBS, 5,000 shares.

C. A. BRANDENBURG, 50,000 shares.

W. J. KIRSHER, 24,000 shares.

Call for Special Meeting of Directors.

COMPANY'S OFFICE,

514 Bank Building.

Denver, Colo., July 9, 1917.

A special meeting of the board of directors of The Great Lucky Buck Gold Mining Company is hereby called for July 12, 1917, at the hour of 10 o'clock a. m. at the office of the company to fix the selling price of treasury stock, and for the consideration of such other business as may be brought before it, of which you will please take notice.*

E. J. NOLDS,
President.

To B. J. Perry and Peter W. McCaffrey, Directors.

*If, at request of stockholders, add: "This meeting is called at the request of the holders of 10 per cent of the stock of the company as provided in the by-laws of the company."

Vacancies.

A vacancy in any office except that of director is, of course, filled by the same authority which made the original election or appointment. But vacancies in the membership of the board should be provided for in a by-law (§ 997 M. A. S.), such by-law usually allowing the remaining members to fill the vacancy.

But where all the directors have resigned or died or refuse to act, or so many that the board cannot make a quorum, there must be a meeting of stockholders called to fill up the board.

Failure to Hold Annual Meeting.

Where the annual election for any reason is not held the old board continues in office, and the following section provides for the call of a special meeting in such case.

Sec. 998 M. A. S. Holdovers—Special Meeting to Fill Vacancies.

In case it should happen at any time that an election of directors or trustees shall not be held on the day designated by the by-laws of said company, when it ought to have been held, the company for that reason shall not be dissolved; but such directors or trustees may be chosen at any subsequent meeting of the stockholders at which a majority of the stock is represented, such meeting to be called by the directors or trustees, or any two stockholders, by giving public notice of the time and place of holding such meeting, in the manner provided by section 6 of this chapter; *Provided*, If a majority of such stock be not represented at the meeting so called, the same may be adjourned by the stockholders present, for a period not exceeding sixty days.—R. S. '08, § 867.

[Section 6 referred to now stands, as amended, as Sec. 997 M. A. S.]

Sec. 1000 M. A. S. Election of Officers—Surety Bonds.

The directors or trustees shall elect one of their number to be president, and may elect or appoint such subordinate officers as the company may by its by-laws designate, and such subordinate officers shall, if required by the company, give security for the faithful discharge of their official duties.—R. S. '08, § 852.

Corporate Powers, How Exercised.

All corporate power is exercised by the board of directors. They may delegate the performance of duties to their officers or agents, but the acts of such officers and agents are valid only as authorized by the action of the board. The stockholders are the ultimate beneficiaries, but they have no voice in the corporate management, having delegated that management to the board whose members they have chosen.

By this it is not to be understood that all acts of agents and officers binding the company are to be directed in advance by resolution of the board. As a matter of fact only where special contracts are to be made or some important step is to be taken is the matter noted on the minutes in advance of action taken, and in a very

large mass of corporate contracts the act is that of the president, agent or manager, afterwards reported to and approved by the board; or, more often still, binding on the corporation, not because it ordered it or formally ratified it, but because it accepted the benefits with knowledge of the facts, and so became estopped to repudiate the action of its officer or agent.

But the corporate habit in this respect varies to the same extent as individuals vary in their business habits, between the extreme of order, system and regularity, and the other extreme of looseness and neglect.

Number.

The number must be not less than three nor more than thirteen, and they must be stockholders.

First Year.

The articles always name the members of the board for the first year, but this does not prevent the resignation and filling of vacancies during the first year.

After First Year—Term—Holdovers.

The stockholders at their annual meeting are supposed to fill the board by election of the directors by ballot.

On failure to hold the meeting the old directors retain their office until a meeting is held and elects their successors.

On occurrence of a vacancy if there is still a quorum the matter may lay over until the annual meeting, but if there is less than a quorum the company cannot legally act until the vacancies are filled.

A vacancy in the office of director can only be filled by election at a stockholders' meeting, annual or special, unless the by-laws provide for filling such vacancy by action of the survivors on the board.

A director may, by acquiescence, be estopped to deny the qualifications of a co-director to hold his office.—*Creighton v. Campbell*, 27 Colo. App. 121, 149 Pac. 448.

Of the officers of the company only the president (and inferentially the vice-president) is required by statute to be a director. Although directors are spoken of as officers, there is a distinction between directors who are elected by the stockholders and officers who are appointed by the directors.—*Id.*

Powers—Duties.

As above stated, whatever power the company has, the board has—or, rather, the company exercises its power through the board. Nor does the board itself contract direct with those with whom it has dealings, but orders action to be taken by its president and secretary or some other agent, or passes upon the action of such agents already taken.

On the other hand, its powers are subservient to the restraining clauses in the by-laws. This restraint, however, is but nominal when, as in most cases, the board has power to adopt and amend the by-laws.

All officers of the company are elected or appointed by the board. This includes not only the executive officers of the company, usually confined to president, vice-president, treasurer and secretary, but managers, superintendents and agents of all kinds, who are in one sense employees of the company and in other aspects its officers or agents.

Besides the duty of appointing officers, the directors order the issue of stock, fix the price at which it is to be sold, direct the making of purchases or sales, and have the right to call upon any officer to report or account, and have a controlling power over any threat of action by subordinates, contrary to the policy of the board, because such subordinates must yield their judgment to the duty of obedience to the company.

They have sole control of the litigation of the company.—*D. & R. G. Ry. v. Canon City Co.*, 99 U. S. 463.

For misconduct and mismanagement by directors the company may recover damages, but a stockholder has no such right of action.—*Singers-Bigger v. Young*, 166 Fed. 82.

The lending of money to a solvent corporation by the directors thereof is not illegal.—*Hille v. Evans*, 68 Colo. 98, 187 Pac. 315.

Money of a corporation cannot rightfully be paid out for services rendered by an attorney to directors in defending their misdeeds in office.—*Witherspoon v. Hornbein*, 70 Colo. 1, 196 Pac. 865.

Quorum.

A quorum is such a number of the officers or members of any body as is competent by law or constitution to transact business.—*Snider v. Rinehart*, 18 Colo. 18, 31 Pac. 716.

There seems to be a distinction between a corporate board and a special board or committee constituted by a legislative Act. And in the latter case it has been held that all the members must be present to make their action legal.—*Schwanbeck v. People*, 15 Colo. 64, 24 Pac. 575.

We doubt much as to this decision applying to permanent boards such as the State Land Board which constantly holds meetings in the absence of one of its members.

An interested director cannot make a quorum to allow his own claims.—*Paxton v. Heron*, 92 Pac. 15, 41 Colo. 147; *Gold Glen Co. v. Stimson*, 44 Colo. 406, 98 Pac. 727.

There must be a quorum of disinterested directors to pass on any resolution. Officers cannot recover salaries voted to them where there was, without their votes, no legal quorum.—*Steele v. Gold Fissure M. Co.*, 42 Colo. 529, 95 Pac. 349.

On the other hand, where the voting director had only a remote interest, and there was no charge of fraud, it

was held that the corporate action was not vitiated.—*Schofield v. Bank*, 97 Fed. 288.

A majority of the quorum, though less than a majority of the board, can bind the company. The by-laws required that four or five directors should constitute a quorum. Three voted for the resolution so that it was lawfully carried. But if the board consisted of twelve, and seven were present, and only four voted aye, this would carry any resolution, though much less than a majority of the board.—*Gumaer v. Cripple Creek Co.*, 40 Colo. 1, 90 Pac. 81.

The action of the board in favor of a director whose vote was necessary to pass the resolution is voidable, but the transaction is valid at law in the absence of corporate action to set it aside. And if the corporation got value received for the note in question it is bound.—*Burns v. National Co.*, 23 Colo. App. 545, 130 Pac. 1037.

Sec. 1153 M. A. S. Quorum of Directors of Charitable Corporation.

The by-laws of any such charitable corporation organized under the laws of this State may declare the number of trustees or managers necessary to constitute a quorum at any meeting of the board.—R. S. '08, § 1030.

The above section applies exclusively to charitable associations. As to business corporations there is no statute which would allow less than a majority to act as a quorum, but while very unusual, it seems that a by-law to that effect might not be invalid.—*Hoyt v. Thompson*, 19 N. Y. 207.

Acceptance of Office.

Acceptance of a directorship or other office where the minutes show an election, is presumed, but the fact may be disproved. It requires some affirmative act to make the party responsible as an officer. Becoming one of the incorporators in articles where he is named as director is complete proof of it, and attending meetings or performing other duties is also proof. But the party elected is at

liberty to decline and if he deny acceptance some item of action amounting to estoppel must be shown, although as above stated the issue starts with the presumption of an acceptance.

Resignation.

A director is at liberty to resign at any time, and to make the resignation effective it is only necessary that the company be informed of it, nor can the refusal of the company to accept the resignation compel a party to serve against his will. The resignation is the dissolution of a sort of contract between the officer and the corporation, which he can dissolve at will by notice to the board or chief executive, and notice to creditors is not required.

But it has been held that where a statute exists or the company has a by-law reading that the directors shall hold office until their successors are elected, that even an accepted resignation is not effectual until the corporation has followed the purported resignation by electing a successor to the resigning director.—*Colo. Debenture Corp. v. Lombard Co.*, 66 Kan. 251, 71 Pac. 584; *Ross v. Western Land Co.*, 223 Fed. 680. The same, where its articles so provided.—*Venner v. Denver U. W. Co.*, 40 Colo. 213, 90 Pac. 623.

A tender of resignation by a director not acted on by the board where the director attended its meetings and acted in all respects as he had previous to the purported resignation does not divest him of his office.—*Id.*

In *Nix v. Miller*, 26 Colo. 209, 57 Pac. 1084, it was decided that a director may resign and so escape further liability and that the resignation was good though not acted on by the corporation. But the conduct of the director was inconsistent with an absolute resignation and he was held. A sham resignation does not release a bank cashier from liability as a corporate officer.—*United Securities Co. v. Ostenberg*, 60 Colo. 249, 152 Pac. 1163.

A special Act of 1915, p. 178 [§ 1051a M. A. S.], provides a form of resignation applicable only to officers of

companies which have actually ceased to do business in the State of Colorado, but still maintain a corporate existence. It has, of course, a very limited application.

Letter of Resignation.

Denver, Colo., August 1, 1917.

To the Colorado Vanadium Company, T. S. Waltemeyer, President:

You are hereby informed that I have resigned my office as director and secretary of your company, this letter being intended as formal notice of my resignation, to take effect upon and after receipt of this notice. Please have it noted on the books and accepted, and let me know the action taken. But whatever action taken the resignation is definite and final.

Yours truly,

J. T. WALTEMEYER.

CHAPTER XXV.

IRREGULAR MEETINGS.

Sec. 999 M. A. S. Meetings—How Called—Where Held.

The by-laws of every corporation shall provide for the calling of meetings of the directors or trustees, and when such directors or trustees shall be present at any meeting, however called or notified, or shall sign a written consent thereto, on the record of such meeting, the acts of such meeting shall be as valid as if called and notified; *provided*, that both stockholders and directors meetings may be held beyond the limits of this state if the articles so provide and that unless it shall be stated in the certificate of incorporation that meetings of the stockholders and directors or trustees may be held beyond the limits of this state, or unless such meeting was authorized or its acts ratified by a vote of a majority of the stockholders at a regular meeting, the action of any meeting held beyond the limits of this state shall be void.—L. '19, p. 353, § 7, amending R. S. '08, § 866.

The regular meeting is one held by a quorum of members pursuant to adjournment or by notice to each director, provision for which notice the above statute directs to be expressed in the by-laws. But it is of constant occurrence that a quorum cannot be got together, in which case the statute provides a convenient method

by which corporate action can be taken where it is known that it will meet with the approval of all members of the board.

Under its terms a meeting can be held at any time and at any place within the State by any two or more members, although less than a quorum, at which meeting action can be taken the same as if a quorum were present, provided only that a record of the same is made, which record should be signed by all the members present, and later the signature of the absent members can be appended. Of course, any such record is tentative, and assumes that the signatures of the absentees will be secured.

We use the words "two or more members" in the above paragraph because in strictness one person can not hold a "meeting"; but considering the object of the statute it is probable that the recorded action of a single member of the board, when approved by all the other members, would be binding upon the corporation.

The words of the section are not explicit or clear, and, it being in derogation of the common law, would doubtless be strictly construed. We therefore advise that no such minority meeting should be called, except where it is understood that the intended action will meet with unanimous approval. A meeting is irregular where notice is not given to every member, and as the object of the "written consent" is to waive the notice and approve the action without notice, it would seem that the written consent of every member of the board is intended.

Certainly in some form it must appear that all the board had notice of the action of the no-quorum meeting and have opportunity either to join in the written consent or to protest against it.

To comply with the wording of the section requiring "written consent thereto on the record of such meeting," the practice is to write up the minutes in the usual form, placing the word "approved" to the left, with space for

the signatures of the absent members. And when such absent members are not expected to return in person the minutes can be made up on a separate sheet and mailed for their signatures. The filing of a consent on a paper other than the minutes proper, while it might possibly estop the company, is not a literal compliance with the statute.

When all the members are present, and no one of them protests, a meeting can be held and due corporate action taken without previous notice and at any place—at least at any place within the State.

The action of directors without formal meeting was upheld in *Denver & C. Inv. Co. v. Rudolph*, 47 Colo. 380, 107 Pac. 816.

Meeting Beyond the State.

Under the proviso of section 999 M. A. S., above printed, the articles may contain a clause allowing board meetings beyond the State, but if they do not contain such clause no meeting can be lawfully held beyond the State, even if all members are present and the "written consent" provision of the first paragraph of the section does not apply; but the action of such foreign meeting will become valid if afterwards ratified by a regular stockholders' meeting held within the State.

There is no provision for holding a meeting of stockholders outside the State. In *Jones v. Pearl M. Co.*, 20 Colo. 417, 38 Pac. 700, the action of a meeting so held was held voidable if not actually void. But the action of such foreign meeting has been held not open to collateral attack.—*Humphreys v. Mooney*, 5 Colo. 282.

CHAPTER XXVI.

OFFICERS.

With the exception of the president and vice-president, under section 1000 M. A. S., it is not required that any

officer of the corporation must necessarily be either a stockholder or a director, though the by-laws usually provide that the treasurer and secretary shall be chosen from the members of the board.

All officers, chief and subordinate, are created by the by-laws or by action of the board of directors.

An allegation that the officers and directors of a corporation did or failed to do any material act as the case may be is equivalent to an allegation that the corporation did or did not do the same act.—Bradford v. Gulley, 10 Colo. App. 147, 50 Pac. 314.

The only officers which the stockholders elect are the board of directors. The attempted election of a president by the stockholders' meeting is a nullity.—Walsenburg Co. v. Moore, 5 Colo. App. 144, 38 Pac. 60.

Statutory Duties of Officers.

It is made the duty of the president (or secretary) to sign all calls for special meetings of stockholders to amend articles.—Sec. 1014 M. A. S. The president and a majority of the directors must sign the certificate of full paid stock. Sec. 1007 M. A. S. The annual report is to be signed by the president and verified by both president and secretary.—Sec. 1051 M. A. S. It is made the duty of the directors to keep books of account and stock ledger.—Secs. 1003, 1004 M. A. S. It is the duty of the secretary, cashier or treasurer to furnish statement of the corporate assets and liabilities on demand of fifteen per cent. of the stockholders.—Sec. 1005 M. A. S.

Powers to Contract—Implied Powers of President and Manager—Corporate Agents.

But the statutory duties are trifling compared to the vast number of instances where duties are performed in conforming to resolutions of the board or carrying out the details of the implied powers of executive officers.

The power to bind the company by contract in theory is confined to the board of directors. All contracts of importance intended to be entered into by the corporation should be authorized by resolution of the board. The board itself signs no contracts, but acts through its executive officer, presumably the president. And every executive officer who comes in contact with those who deal with his company has from the nature of his office certain implied powers.

Quite as often as the president, it is the manager or superintendent who acts as the executive.

The president is an officer; the manager is an agent, and may or may not be also an officer. But in acting for the company their acts are those of agents—the company is doing something by or through the person of its officer or its agent—and there is little practical distinction between the term officer and the term agent, so that the words “officers and agents” are used in contracts and judicial opinions collectively, and very seldom with any distinction made between them.

“A general agent is virtually the corporation itself.”—*Atlantic R. R. Co. v. Reisner*, 18 Kan. 460; *Cuero Packing Co. v. Alamo Mfg. Co. (Tex.)*, 194 S. W. 492.

A party dealing with a corporation is bound at his peril to know the extent of the corporate agent's authority.—*Victoria M. Co. v. Fraser*, 2 Colo. App. 14, 29 Pac. 667; *Extension M. Co. v. Skinner*, 28 Colo. 237, 64 Pac. 198; *Conqueror Co. v. Ashton*, 39 Colo. 133, 90 Pac. 1124.

The above rule has this general qualification, that it does not apply to powers which are implied from the nature of the title of the agent. Where such powers are implied parties can safely contract, and even a by-law not known to the contracting party, which limits these implied powers, is not binding on the contracting party.—*Arapahoe Cattle Co. v. Stevens*, 13 Colo. 534, 22 Pac. 823; *Western Co. v. Bank*, 23 Colo. App. 143, 128 Pac. 476.

The real difficulty is to know what is the extent of implied powers, and in the *Victoria* case, *supra*, it was held that the general manager of a mining company had no implied power to contract to purchase mining machinery, a *Huntington* mill, price \$765. It is a close case, and undoubtedly contracts for single pieces of machinery, supplies, repairs, etc., would be within his implied powers.

A mining superintendent, having power to let leases subject to approval, has no authority subsequently to modify a lease so executed.—*Aliunde M. Co. v. Arnold*, 16 Colo. App. 542, 67 Pac. 28.

The right to deal with lessees for a surrender of their lease is not within the implied powers of the president or manager.—*Conqueror Co. v. Ashton*, 39 Colo. 133, 90 Pac. 1124.

The superintendent of a mining company has no power to borrow money on the credit of the corporation.—*Union M. Co. v. Bank*, 2 Colo. 565.

And the president has no authority by virtue of his office to ratify such loan. But it may be estopped to deny the debt by its receipt of the benefits of the loan.—*Same v. Same*, 2 Colo. 248. And there are cases where even this power, to borrow money, may be implied.—*Spangler v. Butterfield*, 6 Colo. 356.

If an agent borrow money in his own name and uses the proceeds for the benefit of the company this may make the company a debtor to him, but the party from whom he borrowed the money cannot hold the company as a debtor.—*Sperry v. Pittsburg Co.*, 9 Colo. App. 314, 48 Pac. 315.

A mining company's agent may employ laborers in the business of the company, but he cannot pledge the faith of the company to persons not so employed.—*Cons. Gregory Co. v. Raber*, 1 Colo. 511.

Nor bind his company by note or overdraft.—*Breed v. Bank*, 4 Colo. 481.

But parties dealing with a corporation have a right to presume that its agent has all the powers usually exercised by and implied from the nature of his office.—*Oro M. Co. v. Kaiser*, 4 Colo. App. 219, 35 Pac. 677.

By allowing certain officers to continually perform certain acts, or by allowing one certain officer to perform all the corporate functions, a presumption of grant of authority arises against the corporation.—*Oro M. Co. v. Kaiser*, *supra*; *Colo. Springs Co. v. Am. Pub. Co.*, 97 Fed. 844.

The general manager of a company, though also a director, has no right to bind the corporation by giving its promissory note.—*Sanford Cattle Co. v. Williams*, 18 Colo. App. 378, 71 Pac. 889.

A by-law, which says that the duties of the manager "shall be to take charge of the business of selling ores mined, and to look after the development of the mining property, and to attend to all of the details incident to the business of the company at its mines," gives him authority to contract for the sale of a six months' product of the mine.—*R. E. Lee M. Co. v. Omaha Co.*, 16 Colo. 118, 26 Pac. 326. But in an Illinois case, where a salesman was appointed under a contract in much the same terms as the above by-law, it was construed that he could not make a contract for the future product of the mine.—*Blackmer v. Summit M. Co.*, 187 Ill. 32, 58 N. E. 289.

Where the by-laws of a corporation vested the board of directors and president with the general management of its affairs, the directors could only act as a board and not individually, and a contract made with the secretary and treasurer, who was also a director, was not binding on the corporation.—*Extension M. Co. v. Skinner*, 28 Colo. 237, 64 Pac. 198.

In *Fisk M. Co. v. Reed*, 32 Colo. 506, 77 Pac. 240, a mining superintendent contracted that his company would pay half the cost of drainage of their own and an adjoining mine, which cost of drainage ultimately amounted to

a very large sum, and the company was held bound to the contract.

Though defendant's manager had no authority to borrow money on its behalf, or to execute its note for money so borrowed, yet it having received the money directly, and it having been used for its benefit, it is liable for money had and received, notwithstanding the manager was short on his accounts and borrowed the money to cover up the shortage.—*Hireen v. English Lumber Co.*, 46 Colo. 216, 104 Pac. 84.

Where the president of a corporation was named as trustee in a deed of trust of land, securing a promissory note to such corporation; and after maturity of the note and the payment thereof he executed a release. It was presumed that in so acting that he received payment of the debt to the corporation, and executed the release as trustee, and in both instances with full authority.—*Guthrie v. Gibson*, 67 Colo. 94, 184 Pac. 989.

Proof of Office or Agency.

The authority of an alleged agent must be proved, but it may be proved by inference from course of dealing.—*Foster v. Ohio Colorado Co.*, 17 Fed. 130.

The fact that anyone is an officer where the point is only an incident in the case may be testified to by any witness who knows, without producing the corporate record of his appointment.—*Stovell v. Alert M. Co.*, 38 Colo. 81, 87 Pac. 1071.

Salaries and Compensation to Officers.

Claims of its officers against a corporation should be allowed and approved before they are paid. What constitutes a sufficient auditing and allowance is a question of law for the court.—*Longmont Co. v. Coffman*, 11 Colo. 551, 19 Pac. 508.

Reasonable salaries paid to officers cannot be recovered back by a stockholder, although no resolution fixing such salaries had been entered.—*McCourt v. Singers-Bigger*, 145 Fed. 104.

The corporate note given for back salary voted to a director is without consideration and void.—*Monmouth Inv. Co. v. Means*, 151 Fed. 160.

Where the secretary of a company has been paid a fixed salary for several years upon his re-election he is presumed to be entitled to the same salary without further corporate action.—*Crane Bros. Co. v. Adams*, 142 Ill. 125, 30 N. E. 1030.

For substantial services rendered by their officers clearly in excess of their official duties they may recover against the company upon express contract or upon a quantum meruit.—*Gumaer v. Cripple Creek T. Co.*, 40 Colo. 1, 90 Pac. 81; *Ruby Chief M. Co. v. Prentice*, 25 Colo. 4, 52 Pac. 210.

A binding contract for services in excess of official duty may be proved without formal resolution of the board.—*In re Gouverneur Co.*, 168 Fed. 113.

But there is no implied contract between the corporation and the members of its board or executive officers to pay them for their routine services to the company.—*Brown v. Rep. Mtn. Mines*, 17 Colo. 421, 30 Pac. 66; *Arapahoe Inv. Co. v. Platt*, 5 Colo. App. 515, 39 Pac. 584. A director who is also the secretary of a company cannot recover for his services in such office in the absence of any provision for compensation in the by-laws or resolution of the board or promise to pay him. It is not like the case of a servant who has earned his wages.—*Silverton Co. v. Haughwout*, 44 Colo. 173, 96 Pac. 975; *Ebner v. Alaska M. Co.*, 167 Fed. 456.

CHAPTER XXVII.

STOCKHOLDERS.

Who Are Stockholders.

One who has paid for his stock and becomes entitled to a certificate is a stockholder although the certificate

itself was never issued to him.—*Mountain W. W. Co. v. Holme*, 49 Colo. 414, 113 Pac. 501.

The Court in construing sections 993 and 1008 M. A. S. suggests, without so holding in positive terms, that a subscriber who has not paid for his stock is nevertheless a legal stockholder. And it so held in terms where the company has for a consideration extended credit to him for its price.—*Id.*

This case was followed in *Lilylands Co. v. Wood*, 56 Colo. 130, 136 Pac. 1026, where the court allowed stock subscribed for but not fully paid up, to be voted and held that a by-law prohibiting such stock from voting was void.

The stock ledger is competent evidence that those whose names are there set down were stockholders in the corporation at the date there mentioned.—*Bundy v. Wilson*, 66 Colo. 253, 180 Pac. 740.

Relations to the Company.

The title to the corporate property is in the company itself; the power to act rests in its board of directors, and the stockholders are only the ultimate beneficiaries of the board, its trustees. They have no personality in suits at law, which recognize only the corporation into which they have merged, except only where, in default of action or for improper action of the board, they sue for relief, or where, in default of service upon an officer or agent, they are served with legal process.

The relation of the stockholders to the corporation is discussed in *Supply Ditch Co. v. Elliott*, 10 Colo. 327, 15 Pac. 691. They are declared to be in contract with the company by their subscriptions for stock, such contract to be construed by the terms of the articles. The corporation is a trustee for the stockholders and bound to protect their interest, but they cannot revoke the power they have delegated to the board of directors nor repudiate their acts.

But the stockholder stands to the company in no fiduciary relation as do its directors. A stockholder may hold a tax title on the corporation property.—*Meyer v. Wright*, 24 Colo. App. 53, 131 Pac. 787.

Rights and Powers Of.

Stockholders have a right of action to restrain the wrongful misappropriation of the corporate assets.—*Peoples Sav. Bk. v. Colo. Mng. Exch.*, 8 Colo. App. 354, 46 Pac. 620.

The original stockholders of a company have a preferred right over strangers to purchase the original stock of the company or the stock of any new issue, but not as to stock which has been issued and has come back to the company.—*Crosby v. Stratton*, 17 Colo. App. 212, 68 Pac. 130.

The stockholders have no lien on the corporate assets although the company is insolvent until a court of equity assumes jurisdiction to wind it up.—*Curtis v. Smelter Nat. Bank*, 43 Colo. 391, 96 Pac. 172.

Corporations are not responsible for the acts of their stockholders unless the stockholders are acting in a representative capacity.—*Liebhart v. Wilson*, 38 Colo. 1, 88 Pac. 173.

The stockholders' meeting has no power to repudiate any action whereby it has been bound by its board of directors. The delegation of power to the board of directors is exclusive.—*Union M. Co. v. Bank*, 2 Colo. 565.

A stockholder is not a corporate agent, and cannot bind the company by his own act or the act of an attorney employed by him.—*Tabor v. Bank of Leadville*, 35 Colo. 1, 83 Pac. 1060.

A sale of the corporate property by the stockholders, acting either together or separately is not valid.—*Servant v. McCampbell*, 46 Colo. 292, 104 Pac. 394.

A contract made by a private corporation on a sale of its business and good-will, that it will not again engage

in business in competition with the purchaser is not binding individually on a stockholder, even though he may have been an officer acting for the corporation in the transaction.—*Hall's Safe Co. v. Herring Safe Co.*, 146 Fed. 37.

A stockholder may do the annual labor to save forfeiture on a mining claim, and he cannot later repudiate such work as done for the company and relocate the claim for himself.—*Wailes v. Davies*, 164 Fed. 397.

Where stockholders to save the corporate property redeem from a tax sale or a judgment sale they are not mere volunteers and may recover moneys so advanced from their company.—*Duquesne M. Co. v. Glaser*, 46 Colo. 186, 103 Pac. 299.

The equity of the creditors of an insolvent corporation is superior to those of persons who previously became stockholders, even though the subscription was obtained by fraud.—*Van Gilder v. Eagleson*, 66 Colo. 364, 181 Pac. 539.

Stockholders cannot repudiate a transaction which binds the corporation.—*Kunkle v. Soule*, 68 Colo. 524, 190 Pac. 536.

In a stockholders suit to cancel stock of others as full paid issued for inadequate consideration, held, that plaintiffs must allege and prove their innocent purchase.—*Id.*

Control of Company.

No combination of stockholders less than the whole will be permitted to control the officers of the corporation in their interest alone, to the injury of the minority.—*Glen-gary M. Co. v. Boehmer*, 28 Colo. 1, 62 Pac. 839.

The fact that one person owns a majority of the stock does not make him liable for such acts as would make a director personally liable to a creditor of his company.—*Liebhardt v. Wilson*, 38 Colo. 1, 88 Pac. 173.

One who holds a majority of the stock and so controls the board sustains to the other stockholders the same fidu-

ciary relation as an officer and director.—Steinfeld v. Nielsen, 12 Ariz. 381, 100 Pac. 1094.

A party holding such position is bound to disclose to a fellow stockholder whose stock he desires to purchase all the knowledge he has and which the seller has not, in regard to facts affecting the value of the stock. But he is not bound to disclose his motives in asking for the stock; and the court (in a most unsatisfactory line of reasoning) held that the defendant, being manager of the mine, had presumptively as much knowledge of "the plans of the corporation for the future working and development of the company's property" as the purchaser had, and therefore the buyer had no cause of action.—*Id.*

CHAPTER XXVIII.

THE STOCK ISSUE.

Form of Stock Certificate.

Incorporated Under the Laws of the State of Colorado.

No. 1. 50 SHARES.

THE BOOTH MERCANTILE COMPANY.

CAPITAL, \$50,000. EACH SHARE, \$1.00.

This Is to Certify. That Claude F. Brown is the owner of 50 shares of the capital stock of The Booth Mercantile Company, transferable only on the books of the company on surrender of this certificate properly endorsed.

In Witness Whereof, The president and secretary have hereunto subscribed their names and caused the corporate seal to be hereto affixed at Kremmling this first day of July, A. D. 1917.

HENRY P. LOWE,
President.

(CORPORATE SEAL.)

DAVID P. HOWARD,
Secretary.

Stub.

Certificate No. 1 for 50 shares, issued to Claude F. Brown, dated July 1, 1917. From whom transferred.....
Date,, 1917. No. of original certificate. No. original shares. No. shares transferred.

Received Certificate No. 1, for 50 shares, this 1st day of July, 1917.

CLAUDE F. BROWN.

Assignment.

For Value Received, I hereby sell, assign and transfer to Joseph K. Bozard 50 shares of the capital stock, represented by the within certificate, and hereby authorize the transfer of the same on the books of the company.

Witness my hand and seal this second day of July, 1917.

CLAUDE F. BROWN. (SEAL.)

Witness: *George G. Anderson.*

The certificates are almost invariably engraved with more or less variation in the wording, but the above contains all the essential contents.

The form of stock certificates is substantially the same for all sorts of companies, with immaterial enlargements in some of the blanks used.

A stock certificate is a paper certifying that there has been issued to the party named on its face so many shares of the stock of the company, or that such person is the owner thereof.

It should properly also give the name of the State under which incorporated, the total capitalization, and, of course, contains its own number and gives the number of shares.

It is required to be signed by the president and secretary, and must bear the impression of the corporate seal.

One who buys stock certificates not having the corporate seal nor the signature of the president, is put on inquiry and is to be treated as though it were purchased with full knowledge of the facts.—*Byers v. Rollins*, 13 Colo. 22, 21 Pac. 894.

Shares of stock are personal property.—*McClaskey v. Lake View Co.*, 18 Colo. 65, 31 Pac. 333.

For definition of stock certificate, see *Beckwith v. Galice Co.*, 50 Oregon 542, 93 Pac. 453.

The value of a stockholder's interest is his proportion of the net assets measured by his stock holdings after discharge of corporate liabilities.—*Creighton v. Campbell*, 27 Colo. App. 122, 149 Pac. 448.

One share of stock is identical with any other share of the same issue of the same company. The certificate is not the subject of ownership, but simply the evidence of ownership.—*Marshall v. Marshall*, 11 Colo. App. 506, 53 Pac. 617. Cited and approved in *Mountain W. W. Co. v. Holme*, 49 Colo. 428, 113 Pac. 501.

A corporation has a right to refuse to cut up a certificate into an unreasonable number of small ones.—*Schell v. Alston Co.*, 149 Fed. 440.

Printed "Non-Assessable."

The stock of any ore reducing, mining or tunneling company must have the word "assessable" or "non-assessable" plainly printed on its face.—Sec. 1109 M. A. S. This clause, as well as the preceding part of the section requiring the assessability or non-assessability of the stock to be stated in the articles, is strictly confined to the three sorts of companies above named—nevertheless, stock issued by other classes of companies is often so printed and the special clause as to assessability inserted in their articles.

While the printing of the words "non-assessable" on the face of the stock of such other classes of companies might estop the company from making calls, we cannot advise that it would make the stock safe from attacks of creditors of the company.

Subscription Contract.

(Of Company to be Organized.)

The Range Bear Smelting Company, proposed Capital 100,000 shares of \$1.00 each, to be organized as a Colorado Corporation.

We, the undersigned, for value received, severally agree to purchase the number of shares set opposite our respective signatures hereto.

And to pay cash for the same upon the request of The Treasurer of said Company.

No such request for payment shall be made until full one-half of the stock of the company shall have been subscribed for.

Made and dated at Colorado Springs, Colorado, this fifth day of May, 1917.

VICTOR G. HILLS,	1,000 Shares.
HERMAN FLECK,	1,500 Shares.
EDWARD T. YETTER,	500 Shares.

The above is a contract to pay cash for the original stock.

If the capital is to be raised in installments substitute for the second paragraph:

And to pay ten per cent of the face value upon request of the Treasurer of the Company and the balance as assessments may be levied from time to time.

Subscription Contract.

(After Organization.)

We, the undersigned, for value received, severally agree to and with the above named company to purchase the number of shares set opposite our respective signatures hereto:

And to pay cash for the same at 25 cents for each share of full paid treasury stock upon the written request of the Treasurer of said Company.

This contract is several as to each subscriber.

Made and dated, etc., with caption and signatures same as in the preceding form.

This form is for stock that has been paid up by donation or otherwise.

A subscription to take stock in a company on a total capital as stated on the paper is not binding until all the shares are subscribed for.—*Stearns v. Sopris*, 4 Colo. App. 191, 35 Pac. 281.

Where a stock subscription contained a clause that no oral representation should avoid the contract it was held a valid warning and upheld.—*Jones v. Bankers Trust Co.*, 235 Fed. 649.

Money paid for stock in a proposed company which never becomes incorporated may be recovered back from the promoters.—*Greiger v. Salzer*, 63 Colo. 167, 165 Pac. 240.

Lost Stock.

Where a stock certificate has been lost or stolen the company may rightfully demand an indemnity bond before issuing a new certificate, which certificate when issued should be marked "Duplicate."

Form of Indemnity Bond.

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, Louis Nathan, of Denver, Colorado, the principal, and G. L. Warson, of the same place, as surety, are held and firmly bound unto the Kerenskey Oil Company, a corporation organized under the laws of the State of Colorado, its successors and assigns, in the penal sum of five hundred dollars, for the payment of which sum well and truly to be made we do hereby bind ourselves, our executors and administrators, firmly by these presents. Witness our hands and seals this 25th day of April, A. D. 1917.

Whereas, according to the stock book of said company the said Louis Nathan is the owner of certificate No. 21, for 250 shares of the capital stock of said company, which certificate has been lost, destroyed, mislaid or stolen, and has applied for a new duplicate certificate in place thereof, which application has been granted upon his giving security to said company in the penal sum of this bond:

Now therefore, the condition of the above obligation is such that if the said obligors shall save harmless the said company in the premises from all loss and damage which may accrue to said company by the presentation of such certificate by any lawful holder thereof and shall pay any judgment which may be rendered against said company based on suit against said company by or on behalf of the lawful holder of such stock with costs of suit and shall return the original certificate if the same be found:

Then the above obligation to be void; otherwise to remain in full force and virtue.

LOUIS NATHAN, (Seal.)

G. L. WARSON, (Seal.)

Sealed and delivered in the presence of

W. D. HAMMAN.

The penalty of the bond ought to be based on the market, not the face value, of the stock.

Preferred Stock.

Preferred stock is stock which is entitled to dividends from the earnings of the company before the common stock is paid a dividend from such earnings.—Cook Corp., Sec. 267.

To be lawfully issued it must be provided for at the launching of the company and before any stock is delivered, unless by consent of all the stockholders. After stock has

been issued as common stock and become scattered, neither a stockholders' meeting nor the board can legally order the issue of such stock to the manifest injury of the stock already outstanding.

Its issue should be authorized by by-law, and it is not unadvisable to anticipate its issue in the articles of incorporation. See p. 32.

Deferred Stock.

Is stock upon which no dividend can be allowed until certain indebtedness is discharged, or upon some similar condition. It is not of frequent occurrence, but may exist as one of the complications of a reorganization.

Watered Stock.

Is any stock for which its face value has not come to the treasury either in money or in money's worth. It is not, as often assumed, the excess of the face value of the stock over the valuation of the company's entire assets, because such excess may come to exist after the stock has been fully paid, by losses or depreciation of the value of the company's holdings. Any stock sold and issued for less than par is watered stock.

Sec. 9. Fictitious Stock, Bonds—Increase of Stock.

No corporation shall issue stocks or bonds, except for labor done, service performed, or money or property actually received, and all fictitious increase of stock or indebtedness shall be void.

The stock of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding a majority of the stock, first obtained at a meeting held after at least thirty days' notice given in pursuance of law.—Const., Art. XV.

Section 995 M. A. S. is a verbatim repetition of the first paragraph of the above section of the Constitution.

The above section has been subject to much construction.

It is every-day practice for a newly organized corporation to advertise its stock for sale at ten cents on the dollar

or some other even much smaller portion of its face value.

What then is the liability of a purchaser of this stock for the ninety cents on the dollar which he has not paid?

If it is an out and out sale for this diminished figure he is undoubtedly liable to pay the ninety cents to any creditor of the company. Or the company may assess the stock from time to time to collect the remaining ninety cents.

But a company seldom sells its original stock on any such terms as would make the buyer open to this self-evident liability. The usual formula is to issue the stock to those who offer land or other property to start the company who return a large bulk of it to the corporation. This exchange or sale makes the stock apparently full paid. It has been once issued and paid for in land.

But on such a proposition a company would be launched and have acquired property and yet be without a dollar to promote its plans. It could, of course, borrow money on its assets, but this would at once depreciate the value of its stock.

The plan usually adopted is for the vendors of the land who have made the stock paid up by their deed, to donate a large portion of the stock back to the company which can then sell this reissued stock for any price it can get and such stock is in law and in fact paid up stock.

It is obvious that this plan invites criticism and to say that the decisions have cleared up all the questions likely to arise would be to state what is not true. But the practical result seems to be this:

1. The sale to the company and donation back is valid.
2. Such donated stock is treasury stock which the company can sell for whatever price it can get.
3. Being paid up stock the purchaser is not liable for the unpaid deficiency of ninety cents or whatever the difference may be.
4. But he is so liable where the sale to the company has been at an excessive valuation or where the company

has received no consideration whatever or only a pretense of consideration.

Paid Up Stock.

The presumption in favor of the bona fide buyer of stock from the corporation, though at less than par, is that the stock was paid up and the burden of proof is on the party alleging to the contrary.—*Henry v. Semonian*, 27 Colo. App. 487, 150 Pac. 818.

The buyer of stock from a corporation purportedly paid up at less than par is not liable for the difference to the corporate creditors.—*Id.*

Consideration.

Suit for cancellation of stock based on issuance without adequate consideration not maintained by stockholders whose stock is similarly defective.—*Soule v. Kunkle*, 205 Pac. 529.

An attorney who renders services to the corporation to the full value of the stock which he received, is not liable for an assessment thereon, even though the shares came to him from one who obtained them without paying anything therefor.—*Sweet v. Barnard*, 66 Colo. 526, 182 Pac. 22.

Treasury Stock.

Treasury stock is defined in the Standard dictionary as "stock of a company held by itself." It is a modern term and would seem to include the original unissued stock as well as stock purchased by or donated or forfeited to the corporation and held for sale, but such is not its commonly understood meaning.

In *Bivens v. Hull*, 58 Colo. 342, 145 Pac. 694, it was held that stock owned by the company which had never been issued was not treasury stock, although it had been so styled by the parties before the court in their contract. So that, strictly speaking, the term does not, under that decision, cover unissued stock. But the distinction will rarely be material and neither class of such stock has any right to vote at stockholder's meetings.

In this Bivens case, there was an alleged agreement between two persons who were a majority of a board of three directors and who also owned control of the stock, to increase the capital stock of the company and to issue to plaintiff 50,000 shares and to the two directors 30,000 shares, the consideration being that plaintiff should sell enough shares to raise \$5,000 to promote the company.

Plaintiff did sell or contracted to sell 33,333 shares and so secured the \$5,000, being 15 cents for each \$1 share.

The court refused to enforce the contract because:

1. The directors could not bind the corporation to do the corporate acts required by the contract.
2. For the 30,000 shares to go to the directors, the company was to receive no consideration whatever.
3. That the brokers' services were not worth the amount of stock he was to receive.

Where stock is issued to persons who neither pay nor agree to pay anything for the same, the holders do not become stockholders.—*Arkansas River Co. v. Farmers Loan Co.*, 13 Colo. 587, 22 Pac. 954.

Donation of Stock.

The donation back from the stockholders to the company of full paid stock to hold as treasury stock is recognized as lawful beyond question in *Mosher v. Sinnott*, 20 Colo. App. 462, 79 Pac. 742.

It is common practice for corporations to issue their stock in payment for property, thus making it full paid, and to accept from the stockholders a donation of a part of it to be placed in the treasury and sold for the purpose of providing working capital.

Over-Issue.

An irregular over-issue of stock does not invalidate the original issue.—*Byers v. Rollins*, 13 Colo. 22, 21 Pac. 894.

Ownership.

As to creditors no one is an owner of shares unless

shown by the books of the corporation to be such owner.—
Snider v. Bourquin, 68 Colo. 207, 188 Pac. 727.

Pools.

A pool is any contract or arrangement between stockholders to obtain control of the company, or any other ultimate business benefit such as may be secured by tying up the stock for a definite period or until certain results are accomplished, and compelling such stock to act for the common protection of all the members of the pool.

The safest form is usually to issue or transfer all the stock intended to be pooled to a trustee, with instructions similar to escrow instructions expressed in the terms of a contract between the trustee and the members of the pool.

There are no statutory regulations of the subject, and such pooling is lawful except where it passes bounds and comes under the rule that contracts in restraint of trade or against public policy are void or voidable.

An agreement for a limited period that all the pooled stock shall vote as the majority may direct; that it shall not in the meantime be sold; that it shall vote for certain persons as directors—is not invalid. So also the pool may agree to offer the stock to the members of the pool before it can be sold to outsiders.

But the attempt to control by taking irrevocable proxies is against public policy and void.

Pool Contract.

ARTICLES OF AGREEMENT of date this 20th day of March, A. D. 1917, between *Charles A. Lewis, Matthew H. Callahan and Corydon S. Wallace*, all of Denver, Colorado, first parties, hereinafter styled stockholders or subscribers;

And *Lucius F. Hallett* of the same place, second party, hereinafter styled the trustee.

The consideration of these articles to the trustee is one per cent of the stock hereby pooled to be retained by him upon any final determination of this contract by sale of the stock or by lapse of time or otherwise.

The consideration to the stockholders is the benefit to each share of stock by retaining as the intent and effect of the con-

tract the control of said company to its owners and the probable advance in the value of the shares by preventing the disposal of the stock and securing a strong and competent management of the corporate affairs.

Now Therefore These Articles Witness:

1. The stockholders hereto subscribing hereby sell and assign to the said trustee all their certificates of stock in said company representing the number of shares set opposite their respective signatures and deliver the certificates duly endorsed to be held by him for the use and benefit of the subscribers and not to be sold except upon the conditions and under the instructions herein intended to be expressed.

2. An offer of \$1.10 per share for the whole of the pooled stock is to be accepted by the trustee, the money received therefor to be paid to the subscribers according to their respective holdings.

3. Any offer of like amount for any part of the pooled stock shall not be accepted.

4. The said trustee shall have the right to vote said stock at all regular and special meetings of the stockholders and this contract shall be considered the proxy of each subscriber to represent and vote his stock at such meetings.

5. No transfer or agreement to transfer the stock or a part of the stock of any subscriber shall be recognized except from one subscriber to another subscriber unless the proposed transferee shall become a signer of these articles.

6. In case of the decease of any subscriber his legal representative shall be bound by these Articles.

7. The bankruptcy of any subscriber shall not determine this Pool Contract as to the other subscribers.

8. Other stockholders not signing this contract before its delivery may, with the assent of the trustee, subscribe the same on any occasion during its life time and shall thereupon become bound by its terms.

9. At the expiration of two years from date hereof this contract shall be at an end and the stock shall be delivered back duly assigned to the respective subscribers.

10. At the next annual election of said company all of the stock held by the trustee under this contract shall be voted for the re-election of the present board of directors or the survivors of them.

11. The trustee is authorized to vote all of such stock in favor of a mortgage or trust deed on the company's property securing the bond issue lately proposed or any modification of such bond issue.

12. In case any offer of purchase is made for the whole or a control of the corporate stock or the purchase of the corporate assets at a price equal to or greater than the stock valuation fixed by the above clause No. 2, said trustee is not only authorized but directed to accept such offer on behalf of the holdings of the subscribers.

In Witness Whereof, the said parties have hereunto set their hands and seals.

CHARLES A. LEWIS,	(SEAL) 1,000 shares.
MATTHEW H. CALLAHAN,	(SEAL) 1,000 shares.
CORYDON S. WALLACE,	(SEAL) 1,000 shares.
LUCIUS F. HALLETT,	(SEAL)

Of course no single contract would contain all the above clauses, but they are formulated as instances of what such agreements usually provide for.

And no pooling contract should be entered into verbally nor without legal advice under papers drawn by the corporate counsel or the attorney for the interested stockholders.

A contract to make no transfers pending an arrangement to sell the treasury stock, not restraining the voting power of the stock, is valid and affects one who buys stock knowing of such deal.—Cook Co. v. Buck, 59 Colo. 368, 149 Pac. 95.

CHAPTER XXIX.

STOCK EXCHANGED FOR PROPERTY.

Sec. 994 M. A. S. Stock May Be Issued in Payment for Property.

The directors or trustees of any corporation may purchase mines, manufactories and other property necessary for their business and issue stock to the amount of the value thereof in payment therefor; and the stock so issued shall be declared and taken to be full paid stock and not liable to any further calls or assessments, except as hereinafter provided; neither shall the stockholders thereof be liable to any further payments under the

provisions of section eleven (11) of this Act, but in all statements and reports of the company, this stock shall not be stated or reported as being issued for cash paid into the company, but shall be reported in this respect according to the facts.—R. S. '08, § 851.

[Section 11 referred to is Sec. 1008 M. A. S.]

There is another section covering the same ground, but confined to mining companies, printed on page 43. The decisions there cited apply equally to the above section 994 M. A. S.

Under the above section 994 M. A. S. stock is issued usually immediately after incorporation to the extent often of the entire capital, less a nominal issue of one or more shares to each director.

If the property so purchased has a real value approximately equal to the face value of the shares the transaction is unimpeachable, but if flagrantly below such value there is always danger of the creditors attempting to hold the stockholders for debts in their favor.

In *Speer v. Bordeleau*, 20 Colo. App. 413, 79 Pac. 332, the stock was issued in purchase of a bond and lease, and it was held to be upon sufficient consideration.

CHAPTER XXX.

CERTIFICATE OF STOCK PAID UP.

Sec. 1007 M. A. S. Verified Record of Stock Paid Up To Be Made.

The president and a majority of the directors or trustees, after the payment of the last installment of the capital stock so fixed and limited by the company, shall make a certificate stating the amount of the capital so fixed and paid in, which certificate shall be signed and sworn to by the president and a majority of the directors or trustees, and they shall record the same in the office of the Secretary of State, and a copy in the office of the recorder of deeds of the county wherein the business of said company is carried on.—R. S. '08, § 875.

When all the stock has been issued and paid up a certificate should be verified and filed as above directed.

The section printed is referred to in *Austin v. Berlin*, 13 Colo. 200, 22 Pac. 433, but it will be noted that no time limit is fixed for the filing and no penalty attached for the non-filing of the same.

Certificate of Stock Paid Up.

We, the undersigned, A. A. Johnson, president and director, and W. E. Bridgman and Wm. H. Foster, directors, constituting a majority of the board of directors of The Trappers Trading Company, do hereby certify that the capital stock of the said, The Trappers Trading Company, is 50,000 shares, of \$1 each, all of which has been issued and paid in.

Witness our hands this 8th day of January, 1917.

A. A. JOHNSON,
President and Director.
W. E. BRIDGMAN,
Director.
WM. H. FOSTER,
Director.

STATE OF COLORADO, CITY AND COUNTY OF DENVER, SS.

Before me, the subscriber, a notary public in and for said county, personally appeared the above named, A. A. Johnson, W. E. Bridgman and Wm. H. Foster, who being first duly sworn on their oath say that the within certificate and the matters and things therein stated are true of their own knowledge.

Witness my hand and notarial seal this 8th day of January, 1917.

My commission expires

(NOTARIAL SEAL.)

Duncan W. Miller,
Notary Public.

Where a part of the stock has been issued for property add after the words "paid in"—

Of said stock 1,000 shares were paid for in cash and 49,000 shares were issued for the purchase of property necessary for the business of said company.

Before 1901 if this certificate was filed it relieved the directors from any liability for failure to file annual report, but the law now in force makes no such exemption.—
Sec. 1051 M. A. S.

CHAPTER XXXI.

RIGHT TO BUY ITS OWN STOCK.

Sec. 996 M. A. S. Purchase of Own Stock.

Every such corporation shall have the power to purchase, hold, pledge, sell or otherwise dispose of shares of its own capital stock, and shares so acquired shall not, unless the Board of Directors so determine and take appropriate proceedings for the decrease of the capitol (capital) stock, be deemed cancelled or extinguished, but they shall not be voted upon directly or indirectly; and every such corporation may redeem shares of its capitol (capital) stock at such price, not less than par, and upon such terms and in such manner otherwise as may be expressed in the certificate of incorporation or an amendment thereof creating such shares, and the stock so redeemed shall be deemed retired and extinguished and appropriate proceedings for the decrease of the capitol (capital) stock shall be taken; Provided, that it shall not be lawful for such corporations to use any of their funds for the purchase of stock in their own company or corporations when such use would cause any impairment of the capital of the corporation.—L. '21, p. 197, § 3, amending R. S. '08, § 862.

Except to the limited extent allowed under section 354 M. A. S. a bank cannot lawfully purchase its own stock.—*Kassler v. Kyle*, 28 Colo. 374, 65 Pac. 34.

It will be noted that the language of the section does not forbid the owning of its stock, but the use of its funds to purchase it, and the exception referring to ownership of forfeited stock is mere surplusage. The ownership of donated stock is of course allowable.

A bank is not allowed to buy its own stock. The assignor of such stock remains liable to the claims of creditors.—*United Securities Co. v. Ostenberg*, 60 Colo. 249, 152 Pac. 1163.

A contract by which a corporation allows a purchaser of stock the option to return it and get his money back within a certain time is not in violation of the above section.—*Ophir Co. v. Brynteson*, 143 Fed. 829.

CHAPTER XXXII.

ASSESSMENTS.

All Corporations Except Mining and Ditch Companies and Banks.

Sec. 986 M. A. S. Right to Sue for Arrears.

All bodies corporate, by the appropriate action, may sue for, recover and receive from their respective members all arrears or other debts, dues and other demands, which are now or hereafter may be owing to them, in like mode, manner and form, as they might sue for, recover and receive the same from any person who might not be one of their body, any law, usage or custom to the contrary thereof notwithstanding.—R. S. '08, § 857.

The course of the statute of limitation begins when the assessment is made; and not when a call is made upon the subscriber for their unpaid balances.—Sweet v. Barnard, 66 Colo. 526, 182 Pac. 22.

An action against a stockholder for an assessment upon his stock is subject to the six year statute of limitation.—*Id.*

Sec. 1006 M. A. S. Assessments Levied Pro Rata.

All assessments or installments of the stock of any stock corporation, shall be levied by the directors or trustees in accordance with the provisions of the by-laws, except as herein-after provided, but any assessments or installments required to be paid shall be levied pro rata upon all shares of such stock, except as hereinafter provided.—R. S. '08, § 871.

Sec. 993 M. A. S. Shares of Stock—Par Value—Personal Property—Action to Recover Unpaid Installments.

The shares of stock shall not be less than one dollar nor more than one hundred dollars each, and shall be deemed personal property and transferable as such in the manner provided by the by-laws, and subscriptions therefor shall be made payable to the corporation, and shall be payable in such installments and at such time or times as shall be determined by the direc-

tors or trustees; and an action may be maintained in the name of the corporation to recover any installment which shall remain due and unpaid for the period of twenty days after personal demand therefor, or, in case where personal demand is not made within thirty days after, a written or printed demand has been deposited in the postoffice, properly addressed to the postoffice address of such delinquent stockholder.

By-Laws May Prescribe Forfeiture or Sale.

The directors or trustees may by by-laws prescribe for a forfeiture or sale of stock on failure to pay the installments or assessments that may from time to time become due, but no forfeiture of stock, or of the amount paid thereon, shall be declared as against any estate or against any stockholder before demand shall have been made for the amount due thereon, either in person or by written or printed notice duly mailed to the last known address of such stockholder, at least thirty days prior to the time when such forfeiture is to take effect; *Provided*, That the proceeds of any sale, over and above the amount due on said shares, shall be paid to the delinquent stockholder.—R. S. '08, § 850.

The par value may now be fixed at any amount up to \$100.00, including "No Par Value" shares.—Sec. 993a. M. A. S.

No publication in newspaper is required by the terms of section 993 M. A. S., but if sale instead of forfeiture is intended, it means a public sale, and in such case we advise a ten days' published notice, the same as is given in case of sale of personal property on execution.

The stockholders of every corporation which issues stock are liable to an assessment to the extent of its face value, but there can be no forced assessment beyond such face value. If a purchaser pay the company at its issue the par value of the stock it becomes the stockholder's property without danger of further liability, and its rise in value is his profit and its depreciation is his loss.

But if he does not pay the face value he is liable to assessments until the face value is paid. And on failure to pay, the corporation may sue the stockholder for the amount or may either forfeit the stock or sell it at public sale.

The above sections are declaratory of this general proposition, but the matter is complicated by its relations to the right to sell stock below its face value.

Where stock is sold for less than face value and no certificate of full-paid stock is issued, it is liable to assessment under the above sections.

But where it is sold for less than face value and stock is issued purporting to be full-paid, it seems that in such case the corporation is estopped by its own act to assert that the stock is not full-paid and cannot levy an assessment. But the creditors are not bound by such act and can sue for the difference.

Liability of Transferees.

Where stock is so issued the transferee is also liable, where he has notice that it has not been paid for in full. But not where he had no such notice. If there have been successive transfers and some one of the transferees bought as an innocent purchaser without notice, the stock is then free and may be purchased without liability, even by a party who has actual notice.—*Lake County v. Sutliff*, 97 Fed. 270.

The above are only statements of general principles, and we cannot cover all the complications that arise under this sub-head, in connection with statutes so inexplicit on the subject as the within printed sections.

Formula of Procedure to Collect Assessments.

Analysis of the above sections makes the procedure to assess as follows:

1. The directors by resolution declare when an installment shall become due; in other words, they levy an assessment of a certain per cent.

2. Demand is made on each stockholder, and he has twenty days to pay if served in person, and thirty days if served by mail.

3. The by-laws may prescribe either forfeiture to the company or for sale of the stock, such sale being of course a public sale. A forfeiture would in general be more simple, and therefore preferable to sale.

For form of by-law authorizing forfeiture, see page 171.

A holder of stock, with notice, is, though never a subscriber, liable for an unpaid assessment thereon.—Sweet v. Barnard, 66 Colo. 526, 182 Pac. 22.

Decisions.

A person by becoming a stockholder enters into a contract with the corporation to pay all assessments legally levied.—Callahan v. Chilcott D. Co., 37 Colo. 331, 86 Pac. 123.

The unpaid balance upon a stockholder's subscription is not primarily a legal debt due the corporation, and no action can be maintained therefor in its name until the statutory demand has been made and the statutory period allowed for payment has expired.—Universal Ins. Co. v. Tabor, 16 Colo. 531, 27 Pac. 890.

A creditor may sue an individual stockholder for the balance unpaid on his subscription to the extent of the creditor's debt; and it makes no difference that the plaintiff himself is also a stockholder, provided he has paid in full for his own stock.—Smith v. Londoner, 5 Colo. 365.

The company and the stockholder may be made joint defendants in a suit by a creditor to recover balance due on stock subscribed for.—Tabor v. Goss Co., 11 Colo. 419, 18 Pac. 537.

A trustee in bankruptcy can only recover dues on stock to the amount necessary to discharge the corporate debts, and failing to show the amount of such indebtedness he was properly non-suited.—Felker v. Sullivan, 34 Colo. 212, 83 Pac. 213.

In suits against stockholders to hold them for the debts of the corporation to the amount unpaid on their stock,

the burden of proof to show that the stock was not full-paid is on the plaintiff.—Speer v. Bordeleau, 20 Colo. App. 413, 79 Pac. 332.

When stock has been once forfeited the corporation cannot repudiate its own action and levy a further assessment upon it.—Patterson v. Brown D. Co., 3 Colo. App. 511, 34 Pac. 769.

Where the court in which the affairs of a bankrupt company are being adjudicated assumes to make a levy upon the stock, its order is conclusive of the necessity for the assessment, and the authority of the trustee to sue for it, not upon the principle that the order is a judgment, and therefore *res adjudicata*, but upon the principle that such necessity and authority are things which a stockholder may not gainsay; otherwise as to whether the stock is full-paid. Upon this the stockholder has a right to be heard.—Sweet v. Barnard, 66 Colo. 526, 182 Pac. 22.

Right to Sell Below Face Value.

The board has power to sell full-paid treasury stock below par for what they deem it worth.—Mosher v. Sinnott, 20 Colo. App. 455, 79 Pac. 742.

Where a corporation increases its stock to raise money to carry on its business it may sell the same on the market for the best price obtainable although less than face value, and the purchaser of stock so issued will not be liable to creditors for the balance up to face value. The case draws a distinction between stock so issued and the stock upon which the company was originally organized.—Speer v. Bordeleau, 20 Colo. App. 413, 79 Pac. 332.

On the issue of stock as full-paid at less than par, with an agreement that no further assessment should be made, such agreement is void as to creditors.—Scovill v. Thayer, 105 U. S. 143.

An agreement to organize a corporation and give the vendor stock for his lands on which the company was based

was enforced in *Shuler v. Allam*, 45 Colo. 372, 101 Pac. 350.

Plaintiff, a judgment creditor of an insolvent corporation, brought suit against Henry, a stockholder, alleging that he had paid not to exceed ten cents on the dollar for his stock.

It was proved that the company had made its stock paid up by purchase of certain equities and then filed a certificate that the stock was all paid up, as allowed by Sec. 1007 M. A. S.

Henry had bought his stock from the company after the purchase aforesaid and after the filing of the certificate.

The Court held that the plaintiff could not recover. That one who in good faith buys from the company at less than par, stock so purporting to have been issued and fully paid for, is not liable to the creditors for the difference between the par value and the price he paid.—*Henry v. Semonian*, 27 Colo. App. 487, 150 Pac. 818.

After that, the presumption, nothing to the contrary appearing, is that on its sale to Henry the stock was full paid and the burden of proof on this issue was on the creditor.

In *Durand v. Brown*, 236 Fed. 609, the transfer of a secret process which apparently amounted to nothing more than suggestions of how to run the business, was held good to make stock paid up. The case also goes into the consideration of advances made by the organizers, "option to be treated as a loan," and the rights of creditors on over-valuation.

The liability of subscribers to stock of a Colorado corporation, even where it had elected to act under the laws of another state, cannot be enforced by the court of such state as to the body of stockholders not served in that state.—*McCague v. Dodge*, 50 Colo. 205, 114 Pac. 648.

Resolution to Assess.

Resolved. That an assessment of five cents per share be and is hereby levied upon each and every share of the stock of this,

The Orinoco Importing Company, which has not already been full paid and upon which five per cent or more remains unpaid. That the secretary serve in person or by mail written or printed demand of payment upon each stockholder, which demand shall be accompanied by a copy of this resolution. Said assessment shall be payable on service of the demand, and all shares upon which such assessment shall be not paid within 20 days after date of personal service or within 30 days after date of mailing notice shall immediately thereafter become forfeited to the company.

Seconded and carried at a regular meeting of the board of directors, held at the office of the company, Pueblo, Colorado, this 15th day of July, 1917.

JAMES G. ELLIOTT,
Secretary.

Demand.

OFFICE OF
THE ORINOCO IMPORTING COMPANY,
220 Main Street,
PUEBLO, COLORADO.

July 16, 1917.

TO E. W. WILLIAMS:

Payment of 5 cents per share on the 5,000 shares of stock held by you in said, The Orinoco Importing Company, amounting to \$250, is hereby demanded of you, pursuant to the terms of the above printed copy of the resolution to assess, passed by the board of directors on July 15, 1917. You can pay in cash or remit by check or draft.

Yours truly,
JAMES G. ELLIOTT,
Secretary.

No newspaper publication of this assessment is required.

Sec. 1112 M. A. S. Powers of Directors.

Assessment of Mining Stock—Special Act.

In all mining companies or corporations hereafter formed, in which the stock is made assessable under the charter or by the laws of this State, the board of directors shall have full and absolute powers to levy assessment or assessments, and to rescind the same and to declare dividends, and to do all other acts which they may deem for the best interest of the stockholders of the company or corporation, and which they may deem necessary

for the proper development of any mine or mines belonging to such company or corporation.—R. S. '08, § 978.

[Section 1113 M. A. S., enacted in 1877 is superseded by the later Act of 1891, Sec. 1114 M. A. S., covering exactly the same ground.]

**Sec. 1114 M. A. S. Directors May Levy Assessment—
Sale of Delinquent Stock.**

At any regular or special meeting of the board of directors of any such mining company or corporation, they may, by a majority vote, of all the directors, notice of such meeting having been first given to each director, levy an assessment not to exceed ten per cent, upon each and every share of the capital stock of such company or corporation, payable immediately, at the company's office, to the officer legally entitled to receive the same. And all shares of stock upon which such assessment shall remain unpaid for thirty (30) days from the date of such assessment shall be considered delinquent, and on next day thereafter the secretary of such company or corporation shall make a list of all the shares of stock on which the assessment has not been paid and which are delinquent, giving the number of the certificate, the number of shares and the assessment levied per share, and have the same advertised for thirty (30) days in a daily newspaper published at the place where the chief office of the company or corporation is located, and also in a daily newspaper for the same length of time, published where the mine or mines are located, and if there be no daily paper at one or either of said places, then said notice shall be published for five (5) weeks in a weekly newspaper, and if there be no weekly paper published at one or either of said places, then such notice shall be advertised by posting the same in a conspicuous place at the company's office, and at the mining works of said company for five weeks.

And if the assessment, together with the costs of advertising be not paid within twenty (20) days from the date the same became delinquent, then the secretary shall proceed to sell at public auction in front of the chief office of the company, to the highest bidder, for cash in hand, so much of said delinquent stock as may be necessary to pay the assessment and costs.—R. S. '08, § 980.

**Sec. 1115 M. A. S. Secretary Shall Notify Stockholder
of Assessment.**

That whenever an assessment has been levied, as hereinbefore provided, the secretary of such company or corporation

shall, within five (5) days thereafter, send a notice to each and every stockholder, informing him or them, of the date and the amount of such assessment, the time when the same will be delinquent, and the date when salesday will be; such notice to be sealed up in an envelope, with postage prepaid, and deposited in the postoffice, addressed to such delinquent stockholder, at his last known postoffice address. That all assessments under this Act shall be numbered consecutively beginning at one and going upward;

Provided, however, That no subsequent assessment shall be levied by the board of directors of any such mining company or corporation in less than thirty (30) days after salesday on the previous assessment.—R. S. '08, § 981.

The above are the three sections of an Act of 1891 relating to assessment of mining stock, and the following forms are an attempt to comply with their requirements.

A. Resolution to Assess.

Resolved, That an assessment, to be styled Assessment No. 1, or five (5) per cent, is hereby levied and made upon each and every share of the capital stock of this corporation, The Vanadis Mining Company, payable immediately, at the office of the company, to Jean Francis Webb, the treasurer.

B. Notice of Assessment.

OFFICE OF
THE VANADIS MINING COMPANY.
No. 777 Stout Street,
DENVER, COLORADO.

January 3, 1917,

BRINTON GREGORY, STOCKHOLDER:

You are hereby notified that at a regular meeting of the board of directors of The Vanadis Mining Company, this day held at the office of said company, by a majority vote of all the directors, notice of such meeting having been first given to each director, there was levied and assessed upon each and every share of the capital stock of said company five (5) per cent on the par value of such stock; such five (5) per cent amounting to twenty five dollars (\$25) on your five hundred (500) shares of stock, payable immediately to Jean Francis Webb, the treasurer at this office, address above given; and that such assessment, if not paid on or before the 2nd day of February, 1917, will be delinquent, and your stock, or so much thereof as may be necessary to pay

the assessment and cost of advertising, will be sold, the sale to take place on April 2, 1917, at the hour of 10 o'clock a. m., as will be stated in the notice of sale.

GEORGE NOLAN,
Secretary.

C. Public Notice of Sale of Stock.

COMPANY'S OFFICE.

No. 777 STOUT STREET, DENVER.

February 4, 1917.

An assessment of five (5) per cent per share having been made upon the stock of The Vanadis Mining Company on the 3rd day of January, 1917, by a majority vote of all the directors:

And notice of such assessment having been duly served upon each stockholder, and such assessment having remained unpaid for thirty (30) days from the date of such assessment as to the following described delinquent shares and shareholders, to-wit:

Assessment No. 1.

Shareholders.	No. of Certificate.	No. of Shares.	Total Amount.
John Smith	171	1,000	\$ 50.00
William Jones	173	2,000	100.00
Evan Evans	175	500	25.00

Being the list made by the secretary of said company in compliance with the terms of section 980 of the Revised Statutes of Colorado.

Public notice is hereby given that said stock, or so much thereof as may be necessary to pay the assessment and costs of advertising, will be sold at public auction, to the highest bidder, for cash in hand, by the secretary, in front of the chief office of the company above mentioned, on the 2d day of April, 1917, at 10 o'clock a. m., unless in the meantime paid.

GEORGE NOLAN,
Secretary.

The denial of the addressee after long delay that he received the mailed notice of assessment is to be received with caution. And such delay is fatal to relief against sale of stock on an irregular assessment.—*Weniger v. Success M. Co.*, 227 Fed. 548.

Such notice must be mailed (Sec. 1115 M. A. S.) within five days after date of assessment, sealed up in an envelope,

postage prepaid, to the last known postoffice address of each "delinquent stockholder." The word "delinquent" must be treated as surplusage. The stockholder is not delinquent until the thirty days have elapsed without payment, but the notice is required to go within five days after the levy of the assessment.

Besides the mailed notice, apparently, after the lapse of twenty days beyond the expiration of the thirty days, a further notice must be published in a daily newspaper, published at the place of the chief office of the company; also for thirty days in a daily newspaper where the mines are located. If no daily newspaper at either place, publish five weeks in weekly newspapers. If no weekly paper at either place, post five weeks in a conspicuous place at the company office, and at the mining works.

These two sections of the Act of 1891, 1114 and 1115 M. A. S., undoubtedly supersede sections 1113 and 1116 M. A. S., as to mining companies, but the provisions of these later sections are extremely involved, and the amount of publication required seems not only useless, but oppressive.

It seems that the periods and formula are as follows:

1. The resolution to assess (form "A").
2. The written or printed notice ("B"), to be mailed to each stockholder.
3. This gives the stockholder thirty days for payment.
4. On the thirty-first day the secretary makes out his delinquent list, recited in form "C."
5. Twenty days further, apparently, must then elapse before advertisement.
6. The advertisement "C" gives thirty days more in which to pay, or thirty-five days, if the publication is in weekly newspapers.
7. All the stock is not to be sold, but only so much as the bids for will cover the assessment and cost of advertising.

The above forms follow the statute as closely as is possible, giving the benefit of doubts as to periods of time to

the stockholder, because assessment proceedings are always strictly construed.

Assuming that the assessment was levied January 3d, the sale could not take place earlier than from March 25th to March 30th, practically a period of full three months.

Under section 1112 M. A. S. it is the board of directors who levy the assessment.

By section 1114 M. A. S. the assessment is not to exceed 10 per cent., and must be authorized by a majority vote at a meeting, of which meeting each member of the board must have had notice.

The provision for sale of delinquent mining stocks seems to preclude the right to resort to the more simple procedure by forfeiture.

Under section 1115 M. A. S. the secretary must notify each stockholder.

These involved and awkward provisions as to mode of assessment in a mining company are rendered, however, practically of slight importance, because of the fact that in almost every mining company the stock is by the articles declared non-assessable; but if there be a company with assessable stock we think it can safely follow the above given forms.

Assessment of Ditch Company.

Sec. 1095 M. A. S. Assessment—Pro Rata.

Any corporation owning any ditch or canal for conveying, or reservoir for storing water for irrigation purposes, and when it is deemed necessary to raise funds to keep its ditch, canal or reservoir in good repair, or it is deemed necessary to raise funds to pay any indebtedness theretofore contracted or the interest thereon, such corporation shall have power to make assessment on the capital stock thereof, to be levied pro rata on the shares of stock, payable in money or labor or both, for the purpose of keeping the property of such corporation in good repair and for the payment of any such indebtedness or interest thereon. But no such assessment shall be made unless the question of making such assessment shall first be submitted to the stockholders of such corporation, at an annual meeting, or

at a special meeting called for that purpose, and a majority of the stock issued and outstanding, represented either by the owner or in person or by proxy, voting thereon, shall vote in favor of making such assessment, and in case said stockholders fail to hold any such meeting or fail to make or authorize any such assessment by the 1st of April in any year, then the directors shall have power to make any such assessments at any regular or special meeting called therefor for such year, and an action may be maintained to recover any assessment against any delinquent shareholder, or such corporation may provide for the sale and forfeiture of shares of stock for such assessment as provided in Section 850 of the Revised Statutes of Colorado, 1908, (§ 993 M. A. S.) and may have the benefit of such section for the recovery of such assessment, either by an action or sale and forfeiture, or both, and such corporation shall have a perpetual lien upon such shares of stock and the water rights represented by the same, for any and all such assessments and all parts thereof until the same are fully paid.—L. '17, p. 149, § 1, amending R. S. '08, § 991.

The old Act provided for vote by stockholders, but the amendment allows the directors to make the call in default of stockholders' action. The amendment also brings in the lien clauses.

In making an assessment, the form given for business corporations will apply except, of course, that when the call is made by the stockholders meeting such fact should be recited.

CHAPTER XXXIII.

NEGOTIABILITY OF STOCK.

Certificates of stock are assignable, and pass from hand to hand by endorsement like bills of exchange and promissory notes, and the holders of such certificates are "prima facie" presumed to be the "bona fide" owners.—Supply Ditch Co. v. Elliott, 10 Colo. 327, 15 Pac. 691.

Where a party delivers certificates of stock, with an assignment in blank signed with the owner's signature, a bona fide pledgee or purchaser of the same will be pro-

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tected, notwithstanding the party from whom he got them was guilty of breach of trust in disposing of them.—*O'Mara v. Newcomb*, 38 Colo. 275, 88 Pac. 167.

Shares of stock while not strictly negotiable have many of the incidents of commercial paper and their validity should be sustained where possible.—*Weniger v. Success M. Co.*, 227 Fed. 549.

Situs of corporate stock in the state where the corporation was created.—*Clark v. O'Donnell*, 68 Colo. 279, 187 Pac. 534.

CHAPTER XXXIV.

TRANSFERS AND REGISTRY OF TRANSFERS.

Section 1004 M. A. S., regulating transfers, is printed on page 312.

Where a company issues a certificate of stock without the surrender of the original certificate, as its by-laws require, the corporation cannot repudiate the new certificate on that ground.—*Richardson v. Longmont D. Co.*, 19 Colo. App. 483, 76 Pac. 546.

The provision of the statute that shares shall be transferable only on the books of the corporation in such manner as the articles or by-laws may prescribe does not prevent transfer of stock by deed. This requirement is only for the protection of third parties.—*Id.*; *Thompson v. Rowe*, 27 Colo. App. 361, 149 Pac. 849.

The notation of assignment of stock is sufficient where the entry shows an assignment, from whom and to whom made, and the shares themselves need not be presented. Where the assignee has done all that can be required of him he is not chargeable for the fault of the officers in failing to make proper entry.—*Equitable Co. v. Johnson*, 36 Colo. 377, 85 Pac. 840.

This case came a second time to the Supreme Court under the style of *Ironstone Co. v. Equitable Co.*, 52 Colo.

273, 121 Pac. 174, and it held that: "To perfect a transfer of corporate stock as against innocent third parties, two distinct steps are necessary:

First. The certificate must be assigned.

Second. It must be delivered to the corporation, a new certificate issued and the record required by the statute made on the corporate books."

The Court further held that the pencil memorandum of transfer made by the secretary was not a sufficient transfer and that "A transferee of stock in good faith for value takes it free of any latent equities in favor of third parties."

Any transfer of stock upon the corporation books without the surrender of the original certificate is made at the company's peril, and the real owner of the stock loses nothing by such entry or transfer. Upon stock so issued by wrong or mistake the corporation is liable to a bona fide holder thereof.—*Supply Ditch Co. v. Elliott*, 10 Colo. 327, 15 Pac. 691.

A transfer of stock, to be good against creditors, must be entered on the company books, barring the instance where it is the fault of the company and not of the assignee that the entry has not been made.—*Isbell v. Graybill*, 19 Colo. App. 508, 76 Pac. 550; *Weber v. Bullock*, 19 Colo. 214, 35 Pac. 183.

Transfer of national bank stock without record of the same does not release the stockholders' liability.—*Williams v. Vreeland*, 244 Fed. 346.

The failure of the company to keep a stock transfer book does not excuse the transferee from making a bona fide effort to have the transfer noted.—*Central Sav. Bank v. Smith*, 43 Colo. 90, 95 Pac. 307.

The company has no lien on the shareholders' stock, and the fact that he is indebted to the corporation cannot impair his right to sell it.—*Id.*

Failure to register the transfer of stock makes good a lien of the company on the stock as the property of

the original holder.—*Pueblo Sav. Bk. v. Richardson*, 39 Colo. 319, 89 Pac. 799.

Actual notice of the transfer where there is no registry of the transfer does not bind a creditor.—*First Nat. Bk. v. Hastings*, 7 Colo. App. 129, 42 Pac. 691.

In a suit to compel a registry of stock the corporation is not a necessary party.—*Gould v. Head*, 41 Fed. 240.

As a rule the transferee of stock takes it subject to any conditions under which the original holder took it, and if such original holder is estopped the estoppel is good against the transferee.—*Gumaer v. Cripple Creek Co.*, 40 Colo. 2, 90 Pac. 81; *Boldenweck v. Bullis*, 40 Colo. 253, 90 Pac. 634.

In an action to compel the proper officer to register a transfer of stock an answer that the stock had been acquired without consideration and to get control of the company states a good defense.—*Gould v. Head*, 41 Fed. 240.

The court in a proper case may order the transfer of stock to be entered.—*Farmer's Canal Co. v. Henderson*, 46 Colo. 37, 102 Pac. 1064.

As to whether mandamus lies to procure transfer, see page 270.

The transfer of stock without registry is good as between the parties. This case reviews the decisions on the construction of Sec. 1004 M. A. S. and holds this section to be for the protection of creditors and of subsequent buyers of the stock.—*Shires v. Allen*, 47 Colo. 440, 107 Pac. 1072.

The title of stock may pass although the seller retains possession of the certificate.—*Mountain W. W. Co. v. Holme*, 49 Colo. 414, 113 Pac. 501.

A bona fide gift of stock is valid without endorsement of the certificates.—*Grimes v. Barndollar*, 58 Colo. 421, 146 Pac. 261, 148 Pac. 256.

Whitehead v. Valley View Co. was a suit averring that the plaintiff had surrendered her shares to be re-

issued to the transferee, but the officers of the company made the reissue to themselves. The Court held that she stated a cause of action for relief.—26 Colo. App. 114, 141 Pac. 138.

Officers cannot appropriate the shares of a stockholder of record, who chances to be indebted to the corporation; they can reach his interest only by statutory proceedings, and a refusal to transfer the shares at the request of the stockholder has been held a conversion.—*Kingsbury v. Riverton-Wyoming Co.*, 68 Colo. 581, 192 Pac. 503.

The holder of an unregistered transfer has an equitable title, which the corporation is bound to recognize and complete by registration, even after the statutory limit, when the transferee presents himself before any levy is attempted under sections 4168, 4169 M. A. S.—*Carlton v. Camfield*, 64 Colo. 373, 171 Pac. 1140.

The stockholder's bill of sale of the stock does not pass title as against a subsequent attaching creditor.—*Lucifer Co. v. Buster*, 64 Colo. 179, 171 Pac. 61.

An indorsement by stockholder, upon a certificate of stock, whereby he assumes to "transfer to *** shares of the stock represented by this certificate; and appoints * * * to transfer the stock on the books" makes the certificate transferable by delivery, and the holder by purchase, the equitable owner thereof, as against the corporation. He may lawfully insert in the blank the name of any person as assignee, or attorney in fact. The transfer on the corporate books perfects the title.—*Valleyview Co. v. Whitehead*, 66 Colo. 237, 180 Pac. 737.

The duty of the secretary under M. A. S. § 1004 is purely ministerial. When a certificate bearing an assignment with the blank filled in, is presented, it is his duty to accept it, and make proper entries in the transfer book. Thereupon the transferee is a stockholder, and entitled to a certificate evidencing his character as such.—*Id.*

232 TRANSFERS AND REGISTRY OF TRANSFERS.

It is no part of the corporate duty to determine the title to its shares, prior to the transfer upon its books. If one acting for the equitable owner of the certificate, endorsed, violates his instructions, he, and not the corporation, is liable for his offense.—*Id.*

Title to shares of stock passes by transfer on the books of the corporation and when the shares have been so transferred the transferee becomes the shareholder. This rule applies, whether there is a sale or gift of stock.—*Thomas v. Thomas*, 70 Colo. 29, 197 Pac. 243.

It is not contemplated by the statute that an officer shall determine the ownership of corporate shares, otherwise than by the books of the corporation.—*Snider v. Bourquin*, 68 Colo. 207, 188 Pac. 727.

A sale under execution against one person, of shares standing on the books of the corporation in the name of another, is without effect.—*Id.*

Stock not transferred on the books of the corporation may be reached by the creditors by a proper proceeding.—*Id.*

Officers of a corporation in transferring shares of stock and issuing certificates, act in a ministerial capacity only.—*Kingsbury v. Riverton-Wyoming Co.*, 68 Colo. 581, 192 Pac. 503.

Sec. 4168 M. A. S. Levy on Corporate Stock.

When any execution or writ of attachment shall be issued against any person being the owner of any shares or stock in any incorporated company, or for whom or to whose use any shares or stock in any incorporated company are held by any person other than such defendant, it shall be the duty of the president, cashier, secretary, or chief clerk of such incorporated company, upon request of the officer having such execution or writ of attachment, to furnish him a certificate under his hand, stating the number of rights or shares which the defendant holds, or which are held in trust for such defendant, or to his use, in the stock of such incorporated company.

Officer May Investigate.

And shall allow such officer, upon request, to examine such book or books of the company as disclose the number of rights or shares which the defendant holds or which are held in trust for such defendant, or for his use.

Contempt Proceedings.

And any such officer of any incorporated company who shall refuse to give the officer having such execution or writ of attachment a certificate as above required or who shall wilfully give a false statement in such certificate, or shall refuse to allow the officer to examine such book or books of the company as above provided shall be guilty of contempt and punished by a fine of not to exceed five hundred dollars or by imprisonment in the county jail for a period of not to exceed six months, or by both such fine and imprisonment. And the court from which such execution or writ of attachment shall issue shall have power to have such officers of any incorporated company cited into court for the purpose of examination touching the holdings of the defendant, in any such company, and any officer of such company who shall refuse to testify concerning the holdings of the defendant shall be guilty of contempt.—L. '15, p. 326.

The above printed Section 4168 M. A. S. before amendment merely required the officer representing the corporation to furnish a certificate of the number of shares held by the defendant. But as amended by the above Act of 1915, it makes the officer refusing such certificate or giving a false certificate guilty of contempt and subject to a severe penalty; the like penalty to be adjudged for refusing to allow the officer to inspect the books of the company.

In contempt cases the right of trial by jury does not exist. The statute assumes that unless he submits his books to search the officer's certificate will be false. The right of a court to make the officers of a company criminally liable in a suit where neither they nor their corporation have been served with process may well be doubted.—People v. DeFrance, 29 Colo. 309, 68 Pac. 267.

Shares of stock are, like other personal property, subject to seizure on attachment or execution.—*Struby-Estabrook Co. v. Davis*, 18 Colo. 93, 31 Pac. 495.

The procedure is regulated by Code sections 109-114 and sections 4167-4172 M. A. S. The process is served by leaving a copy with the president or some other officer of the company, usually the secretary, whereupon the officer so served furnishes the sheriff a certificate giving the number of shares held by the defendant.

The sheriff then advertises the same as on any execution sale of personal property, and upon issuing the sheriff's certificate of sale he delivers a copy of it to the secretary of the company, whose duty it becomes to make entry of sale in the stock book, and the title passes to the purchaser.

In attachment the proceeding is similar, and the stock becomes tied up by the service of the writ upon the officer representing the company.

Pullen v. Headberg, 53 Colo. 502, 127 Pac. 954, involved a levy on stock. It was claimed that Holmes, the nominal holder, owned it in trust for one Wilson, but Holmes was no party to the suit. It was held that Holmes should not lose his stock without his day in court and that the statutory certificate delivered to the levying officer could not declare a trust on the stock against Holmes so as to work a good levy against Wilson.

It was further held that the interest of the beneficial owner of stock was subject to sale but not to sale based on the secretary's certificate of ownership.

The buyer of stock on execution sale may compel a reissue to himself and may bring suit to compel transfer on the books although the original holder still holds the certificate.—*Wood. v. Yant*, 27 Colo. App. 190, 149 Pac. 854.

CHAPTER XXXV.**STOCKHOLDERS' MEETINGS.****By-Laws.**

The by-laws always provide for an annual meeting of the stockholders, and for special meeting upon call of the board or by a certain proportion of the stock.

Notice.

The validity of a meeting depends especially upon the regularity of the notice. Ten days' notice by publication is required and a thirty days' notice by personal service or by mail. Section 997 M. A. S. requiring this is found on page 174, and its defective wording as to publication is noted immediately after the text of the section. This notice is necessary for the annual as well as for all special meetings.

Notice of Stockholders' Annual Meeting.

COMPANY'S OFFICE.

505 EQUITABLE BUILDING.

Denver, Colo., July 10, 1917.

The stockholders of The Adventure Ditch Company are hereby notified that the annual meeting of said company will be held at said office, on Monday, the 13th day of August, A. D. 1917, at the hour of 10 o'clock a. m., for the election of directors and for the transaction of such other business as may be brought before it.

JOHN A. MCMURTRIE,

Secretary.

The notice for mailing is the same, but it is usual to have it printed separately with a blank line at the top to be filled in with the name of the stockholder to whom it is addressed.

Mailing a copy of such printed notice might be sufficient without filling in the blank line, but it is folly to invite trouble by neglecting slight precautions.

But mailing a copy of the newspaper containing the notice is not a personal notice to the stockholder.—*Haynes v. Briscoe*, 29 Colo. 137, 67 Pac. 156.

Notice of Special Meeting.

Follow the above form, substituting the words "a special" for "the annual," and after the word "for" state the purpose of the meeting; for instance, "to fill vacancies in the board of directors," "to authorize the board of directors to sell all the property of the company," etc., as the case may be. No business not mentioned in the notice is allowable as such special meeting.—Sec. 997 M. A. S.

It will be presumed that the stockholders have notice of the by-laws.—*Callahan v. Chilcott D. Co.*, 37 Colo. 331, 86 Pac. 123.

No notice of an adjourned meeting is necessary.—*Id.*

In this case the provisions as to notice prescribed in section 997 M. A. S. were held substantially complied with.

Where it had been customary to give the personal notice of assessment, but the published notice had been uniformly omitted by consent of all stockholders, including the plaintiff, he is not in position to complain of such omission.—*Grand Val. Co. v. Fruita Co.*, 37 Colo. 483, 86 Pac. 324.

Quorum.

A majority of the stock constitutes a quorum, but the minority present may adjourn to any date within the next sixty days without giving new notice. It is usual, however, in such case for the secretary to send a memorandum of the date of adjournment to each absent stockholder.

The wording of the section cited would probably not vary the common law rule that stockholders by refusing to vote cannot break a quorum.

Proxies.

Every absent stockholder has the right to vote by proxy [§ 997 M. A. S.], his full number of shares.

A husband cannot represent his wife's stock without a proxy.—*Steele v. Gold Fissure Co.*, 42 Colo. 529, 95 Pac. 349.

Form of Proxy.

The forms in the use vary considerably, and some of them are extremely loose. But any intelligible designation of the holder of the proxy and of the meeting at which it is intended to be used should be sufficient. The use of a scroll seal is customary, but we do not regard it as at all essential.

KNOW ALL MEN BY THESE PRESENTS, That I, Arthur Howe Carpenter, of Denver, do hereby constitute and appoint Louis S. Noble, of Denver, my attorney and agent for me, and in my name, place and stead, with full power of substitution to vote as my proxy at the annual (or special) meeting of the stockholders of The Adventure Ditch Company, to be held on August 13, 1917, according to the number of shares I should be entitled to vote if there personally present.

Witness my hand and seal this 9th day of July, 1917.

ARTHUR HOWE CARPENTER. (SEAL.)

500 SHARES.

Organization of the Meeting.

Customarily the meeting is called to order by the president of the company. But he has no official control by virtue of his office. The meeting may be called to order by any stockholder, and the temporary chairman and temporary secretary are elected *viva voce* by a majority of the members present. The temporary chairman then appoints a committee, who report the number of shares represented, and thereupon the next order of business is the election of a permanent chairman and permanent secretary of the meeting by the stockholders, voting according to the number of shares they own or represent. After the permanent organization is complete the reports of the old officers are received and other business transacted, the last in order being the election of the new board, who

at the meeting have no duties to perform, but on the same day or later may meet as the new board and elect the officers for the coming year.

Prima facie the transferee of stock is entitled to vote and, if chosen, to act as director, although a merely nominal owner.—*Creighton v. Campbell*, 27 Colo. App. 121, 149 Pac. 448.

Nominations—Ballots.

Attention is called to section 997 M. A. S. in requiring formal nominations of officers and the form of balloting. Formal nominations are made necessary as preliminaries to the cumulative vote which is to follow, and there is a threat expressed that "such directors, trustees or managers shall not be elected in any other way."

Cumulative Voting.

The statute, section 997 M. A. S., introduced the rule of cumulative voting, the object of which is to secure to the minority at least some representation on the board of directors. This method of balloting applies to the election of directors, trustees or managers, and to no other case. It can be best explained by an instance:

The minority own one-third of the stock—20,000 out of 60,000 shares. Under the old form each director would be voted on separately, and on each ballot the 40,000 would prevail against the 20,000. But now all the board are voted for on one ballot. There are five directors to be elected. V, W, X, Y and Z are placed in nomination. The minority concentrate their total vote, five times 20,000, on Z. On counting the ballots—

V has.....	75,000 votes
W has.....	50,000 votes
X has.....	37,500 votes
Y has.....	37,500 votes
Z has.....	100,000 votes

The minority has secured one director. If they had attempted to secure two they might or might not have secured both owing to the manner in which the majority scattered their votes. If the minority had held only 10,000 votes they could not have secured even one director if the majority had properly placed their votes.

As a rule the majority should distribute their votes equally upon as many directors as their proportion should entitle them to. It is assumed, of course, that the relative size of the majority and minority are approximately known and the strength of the minority will be allowed for, but if there is no concert of action among the majority, and the minority know their intentions, it is possible to imagine complications where the minority would elect a majority of the board.—*Pierce v. Com.*, 104 Pa. St. 150.

By the amendment of 1921 to said section 997 M. A. S. all new corporations are required to state in their articles "whether or not cumulative voting shall be allowed."

Old corporations were allowed one year to amend their articles and to elect to allow or disallow this form of ballot. If no such amendment was filed they are bound to allow it. As the limit of one year has expired all except not for profit corporations are therefore required to vote in this manner except the few whose articles may provide against it.

Minutes of Stockholders' Meeting.

Annual meeting of the stockholders of The Adventure Ditch Company held at the office of the Company, No. 505 Equitable Building, Denver, Colorado, this 13th day of August, 1917, at the hour of 10 o'clock a. m., pursuant to notice.

Meeting called to order by motion of Michael Murphy that Armour C. Anderson be chosen temporary chairman. The motion being duly seconded and put by the mover of the motion, was carried by *viva voce* vote.

Mr. Anderson took the chair and announced that the next business was the selection of a temporary secretary.

Mr. William V. Hodges moved that Douglas Roller be selected, which motion was seconded and there being no other nom-

inations, the chair put the question and Mr. Roller was selected and thereupon requested to act as Temporary Secretary.

On motion made, seconded and carried, the chair appointed Henry C. Beeler, Frank Bulkley and Arthur Lakes, Jr., as Committee on Credentials and requested that all proxies be handed to the Committee.

The Chair announced that a recess of thirty minutes would be taken to allow the Committee to report.

After recess the Committee reported that all stockholders were present in person or by proxy except 1,000 shares, to-wit.

In Person

Armour C. Anderson	10,000 shares
Thomas Kirby	10,000 shares
David W. Brunton	15,000 shares
Michael Murphy	1,000 shares

By Proxy.

W. Weston, by Henry C. Beeler, proxy.....	7,000 shares
Alfred W. Pick, by Arthur Lakes, Jr., proxy.....	3,000 shares
Theo. F. Van Wagenen, by Wm. V. Hodges, proxy...	2,000 shares
Frank Bulkley, by Douglas Roller, proxy.....	1,000 shares

Total present, 49,000 shares and that 1,000 shares held by J. W. Richards were not represented.

On motion, made, seconded, put and carried, the report of the Committee was received and adopted and the Committee discharged.

It was then moved, seconded, put and carried by unanimous vote of the stock present that the temporary officers be made the permanent Chairman and Secretary of the meeting.

The secretary, at request of the Chairman, read the call for the meeting. (Page 235.)

The Secretary then read the minutes of the last meeting of stockholders and the Chairman announced that if there was no objection they would stand approved. There being no objection it is entered accordingly.

The Annual Report of the Treasurer of the company was submitted in writing and read to the meeting and after some discussion, on motion duly seconded, the report was approved and ordered to be left on file with the Secretary.

Such report showed total receipts \$8,600. Total outlays, \$7,000. Balance in Treasury, \$1,600.

Make similar entries as to reports of president and secretary if presented. Reports of these officers are usually viva voce. No annual report of any officer is required

at the annual meeting of stockholders unless required by the by-laws.

The Chair then announced that the next business in order was to nominate a Board of Directors to serve for the next year and that the election must be by ballot, and that each stockholder could cast his entire vote for one or more directors or divide it as he saw fit according to the cumulative system. Armour C. Anderson, James Sherry and Douglas Roller were nominated.

The Secretary, at the request of the Chairman, distributed blank ballots.

The ballots being filled out were collected by the Secretary and counted and he then handed to the Chairman a slip containing the name of the candidates and the number of votes received by each.

The Chair then announced the result as follows: That Armour C. Anderson had received 27,000 votes, Douglas Roller 13,000 votes and James B. Sherry 7,000 votes. That other candidates had received in all 2,000 votes and that the three persons above named having received a majority of the stock voted, had been duly elected directors for the ensuing year, and the Secretary was directed to notify each director of his election in writing.

There being no further business before the meeting, on motion, it was adjourned *sine die*.

(or)

There being some unfinished business the meeting was adjourned to Wednesday, September 1, 1917, at 10 o'clock a. m. at the same place.

No notice of such adjourned meeting is required.

CHAPTER XXXVI.

CORPORATE RECORDS.

As stated on page 38, the keeping of a record is not required by specific statute, but one is kept as a matter of course in all companies conducted in a business-like way.

Proof of Corporate Records.

Where there is a record parol evidence of what took place at the meeting is not admissible. The book should

be produced with the evidence of the party who made the entry, or his handwriting at least should be proved. The evidence of the president that he was present and that the record is correct is not enough.—*Union Co. v. Bank*, 2 Colo. 565.

When a corporation relies upon its own record strict proof of its authenticity is required.—*Id.*

But less particularity is enough when the record is offered in evidence against itself. A minute amounting to an admission of the debt but not followed up by a resolution held sufficient to justify the making of a note by the Company.—*Gold Glen Co. v. Dennis*, 21 Colo. App. 284, 121 Pac. 677. *Union Co. v. Bank*, *supra*, followed in *Expansion Co. v. Campbell*, 62 Colo. 410, 163 Pac. 968. But the plaintiff was allowed to testify to minutes which he had seen in a book which was not produced.

Though the record of the meeting is the best evidence of the adoption of a resolution, in the absence of such record—that is, where no record was made—those present at the meeting may testify what was done.—*Hendrie & B. Co. v. Collins*, 29 Colo. 103, 67 Pac. 164.

Where a board meeting appointed a certain person as agent, but no record of the meeting was kept it was held that the action of the meeting was good to make the appointment and the failure to record it did not invalidate such action in the least.—*Robinson R. Co. v. Johnson*, 10 Colo. App. 135, 50 Pac. 215.

A corporation is bound by the transcript of its own record.—*W. U. Tel. Co. v. Graham*, 1 Colo. 185.

CHAPTER XXXVII.

PROOF OF CORPORATE EXISTENCE.

Sec. 982. Recording.

When the certificates shall have been filed as aforesaid, the Secretary of State shall record and carefully preserve the same in his office, and a copy thereof duly certified by the Secretary

of State under the great seal of the State of Colorado, shall be evidence of the existence of such company. But no certificate shall be filed or received for any domestic corporation bearing a name identical with, or similar to or liable to be mistaken for, the name of any other domestic corporation. But it is expressly provided that this provision shall not apply to corporations organized under the laws of any foreign state or kingdom or of any state or territory of the United States beyond the limits of this state. Whenever any foreign corporation shall secure a certificate of authority to do business in this state, or shall in any manner become authorized to transact business in this state, or shall transact business in this state, the procuring of such certificate, or becoming authorized to transact business, or transacting business, shall constitute an irrevocable consent on its part to the use of any name by any corporation organized under the laws of the State of Colorado therefore adopted by such corporation organized under the laws of Colorado; and in case such foreign corporation shall under such circumstances contest or interfere with any domestic corporation (through judicial proceedings or otherwise) in the use of the name of such domestic corporation, such foreign corporation shall be deemed to have lost all right to transact business in the State of Colorado, and it shall be the duty of the Attorney General to institute a proper action in the name of the people to oust said foreign corporation, and in case the Attorney General shall fail or neglect to institute such action any citizen of the State of Colorado may institute such action in the name of the people upon his own relation in the District Court of any county in which such foreign corporation may be doing business.

In any action or proceeding instituted in this state by a stockholder or stockholders of any corporation wherein it is alleged and claimed that after any time within two years prior to the taking effect of this act, the property, or a substantial part of the property, of such corporation has been or is, being sold or transferred away from said corporation, or has or will be lost to such corporation, through or by, the wrongful act or neglect of the Board of Directors or Trustees of such corporation in fraud of the rights or interest of such corporation, or of any of the stockholders thereof, or whereby the assets of such corporation are depreciated, decreased, lessened, or lost to such corporation, or the interest of the individual stockholders therein, or any of them are decreased, depreciated, lessened or lost, it shall only be necessary for the complaining stockholder or stockholders to maintain such action or proceeding to allege and prove that the

Board of Directors or Trustees of such corporation has refused to, or will refuse to commence and prosecute such action, or that such wrongful act or acts or neglect complained of was done or permitted by or through such Board of Directors or Trustees.—L. '19, p. 349, § 3, amending R. S. '08, § 848.

Sec. 983 M. A. S. Certified Copies of Articles Prima Facie Evidence.

The certified copy of any articles of incorporation and changes thereof, together with all endorsements thereon under the great seal of the State of Colorado, shall be taken and received in all courts and places as prima facie evidence of the facts therein stated.—R. S. '08, § 849.

The usual and proper proof of corporate existence, whether asserted by plaintiff or defendant in a suit, is by copy of the articles certified by the Secretary of State, as provided in the above sections. Such copy is full proof everywhere, within or without the State of the company's residence. And there should be no doubt that a copy certified by the county recorder is equally admissible under section 1378 M. A. S. See *Schiffer v. Adams*, 13 Colo. 572, 22 Pac. 964.

But where corporate existence is denied, in the absence of such certified copy, or even where owing to some irregularity no certified copy of valid articles can be produced, the incorporation may be proved in many ways, or it may stand on the facts in such position that one or both parties are estopped to deny its existence.

A party who contracts with a company by its corporate name is estopped to deny its corporate existence.—First Cong. Church v. Gr. Rapids Co., 15 Colo. App. 46, 60 Pac. 948; *Holmes Feed Co. v. Bank*, 23 Colo. 210, 47 Pac. 289; *Young v. Plattner Co.*, 41 Colo. 65, 91 Pac. 1109.

Evidence that defendant by his dealings with the plaintiff company recognized it as a corporation is proof of its corporate existence.—*Stuyvesant v. Western Mort. Co.*, 22 Colo. 28, 43 Pac. 144.

Its appearance in a suit by a company is proof of its corporate existence.—*Gauthier Co. v. Ham*, 3 Colo. App.

559, 34 Pac. 484; *Baldwin Co. v. Davis*, 15 Colo. App. 372, 62 Pac. 1041.

In trespass against a wrongdoer by a corporation strict proof of its incorporation is not required.—*Coffin v. Left Hand D. Co.*, 6 Colo. 443 (452).

In criminal prosecutions it is not necessary to prove corporate existence by certified copy of its articles. Proof of reputation is enough.—*Perry v. People*, 38 Colo. 23, 87 Pac. 796; *Howard v. People*, 62 Colo. 131, 160 Pac. 1060.

There is a distinction between the prerequisites to corporate existence and omissions or irregularities in its formation, but the want of even the prerequisites may be taken advantage of only in a case where strict proof of corporate existence is required.—*Duggan v. Colo. Co.*, 11 Colo. 113, 17 Pac. 105.

The above case enumerates the instances where strict proof of corporate existence is required; that is, where failure to comply with any one of the statutory requirements would be fatal and the corporation not to be recognized as existent *de facto*.

These are: (1) *In quo warranto* proceedings: (2) where the corporation is attempting to exercise the right of eminent domain; (3) proceedings of a penal character by a private corporation; (4) suits against its stockholders for its subscriptions; (5) where the question is whether the corporation has power to take by devise or bequest; and in the last two instances there may be estoppel or other incidents which will let in the ordinary rule that a *de facto* existence is legal corporate existence.

CHAPTER XXXVIII.

BY-LAWS.

Sec. 1001 M. A. S. Stockholders Make By-Laws Unless Charter Gives That Power to Directors.

The stockholders of any corporation formed under the provisions of this Act, or the directors or trustees, if the certificate

of incorporation so provide, shall have power to make such prudential by-laws as they deem proper for the management of the affairs of the company not inconsistent with the laws of this State, for the purpose of carrying on all kinds of business within the objects and purposes of such company.—R. S. '08, § 853.

By-laws bear to statute and charter much the same relation as city ordinances to the like superior authority and there is a constant tendency with both to impinge against the higher law. The arbitrary and unreasonable exactions often attempted in by-laws are considered in *Golden Co. v. Bright*, 8 Colo. 144; 6 Pac. 142, and *Wheeler v. Northern Colo. Co.*, 10 Colo. 582, 17 Pac. 487.

As a general rule the by-laws are binding on the directors and through them on the stockholders but not on corporate creditors, except such creditors as deal with the company on notice of the by-laws and so create a debt in reliance on the by-laws.

What They May Do.

They may regulate proxies and manner of voting; impose reasonable and moderate fines; may provide for action by less than a quorum of directors. A by-law may restrict the power of the corporate officers to contract debts.—*Western Inv. Co. v. Bank*, 23 Colo. App. 143, 128 Pac. 476.

When Void.

A by-law cannot compel stockholders to arbitrate their controversies. It cannot impose penalties for past acts nor destroy vested rights. By-laws attempting to interfere with transfers of stock or to forbid their registry are usually held void. They cannot restrict the venue of a suit nor interfere with the laws of evidence.

The by-law of a bank disallowing depositors to correct mistakes unless immediately attended to, is void.—*Mechanics Bank v. Smith*, 19 Johns. 115.

The validity of the by-laws is determined by the same tests as the validity of a contract.—*Burns v. Wray Co.*, 65 Colo. 425, 176 Pac. 487.

It is not necessary to the validity of a by-law that it was deliberately framed with the intent to suppress competition. Not that it results in a monopoly. The by-laws of a corporation dealing in grain provided that any stockholder selling grain to a competitor of the corporation should pay to it one cent upon each bushel so sold was held an unreasonable restraint of trade.—*Id.*

Doubtful Ground.

Whether a by-law may enforce a lien on stock for debts to the company has not been uniformly settled. A by-law forfeiting delinquent stock is subject to many conditions.

By-laws requiring certain formalities to contracts or that they be made only by certain officers are of trifling utility because they do not bind the other contracting party.

A by-law may be good in part though one or more of its clauses be illegal.

Amendment—Waiver.

The power to make by-laws implies the right to amend or repeal them.

A by-law requiring a two-thirds vote to amend, may be disregarded. The majority cannot surrender their right to control.

The agent of a building and loan association has no power to waive its by-laws. The by-laws of such an association are presumed to be known to its members.—*Columbia Ass'n v. Lyttle*, 16 Colo. App. 423, 66 Pac. 247; *People's Ass'n v. Purdy*, 20 Colo. App. 287, 78 Pac. 465.

The office of the by-laws is to control and regulate the exercise of the powers of the directory and to provide for the orderly conduct of the business of the corporation. They define the offices to be held in the company, prescribe the duties of each officer, regulate the order of business, calls for meetings, and generally provide for such

things as otherwise would require frequent special resolutions of the board.

Scattered through the statutes are many references to by-laws of particular kinds of corporations, most of them directory merely, and which would be assumed without the existence of any statute on the subject.

Section 997 M. A. S. speaks of the by-laws of corporations generally as fixing the date of annual elections. It is the function of by-laws to designate the subordinate officers of a corporation.—Sec. 1000 M. A. S.

The by-laws must provide for the calling of meetings of directors.—Sec. 999 M. A. S. The by-laws of title guaranty companies should regulate the election of their directors.—Sec. 1086 M. A. S. The by-laws of mining companies should fix the time and place of stockholders' annual meeting.—Sec. 1111 M. A. S.

Chapter 21 Mills Annotated Statutes [§§ 492-516 M. A. S.] contains many requirements as to the by-laws of building and loan associations. Sections 1127, 1132 and 1156 M. A. S. refer to the by-laws of certain not-for-profit corporations, and section 1153 M. A. S. gives power to charitable organizations to declare by by-laws what number shall constitute a quorum of its trustees.

A by-law of a building association, which gave certain members the right to withdraw their installments, construed as giving a vested right, which could not be taken away by a repeal of the by-law.—*Holyoke Assn. v. Lewis*, 1 Colo. App. 127, 27 Pac. 872.

A by-law forbidding the company to incur indebtedness exceeding \$1,000 is not violated by contract to pay for services by the month which would in time exceed \$1,000.—*Haynes v. Griffith*, 16 Idaho 280, 101 P. 728.

A by-law limiting excess of purchasing power to officers is authority to contract up to that excess.—*Western Inv. Co. v. Bank*, 23 Colo. App. 143, 128 Pac. 476.

Where a loan is contracted in violation of a by-law, but the company uses the money with the knowledge of

the stockholders the company has no defense.—Bensiek v. Thomas, 66 Fed. 104.

By-Law Unknown to Contracting Creditor.

A party contracting with a company is not bound by a by-law of which he has no notice.—Arapahoe C. & L. Co. v. Stevens, 13 Colo. 534, 22 Pac. 823.

Where a contract has been made, which contract is within the implied powers of the agent making it, the company cannot defeat it by invoking the terms of one of its by-laws not known to the plaintiff.—Golden Age Co. v. Langridge, 39 Colo. 158, 88 Pac. 1070.

For form of set of by-laws see page 169.

CHAPTER XXXIX.

CONVEYANCE.

Sec. 842 M. A. S. Conveyance by Corporation.

Private corporations authorized by law to convey any of their real estate may convey the same in the manner authorized by this chapter, or by deed under their common seal, subscribed by their president or other head officer.—R. S. '08, § 700.

Sec. 989 M. A. S. Corporate Deed, How Executed.

It shall be lawful for any corporation to convey land by deed, sealed with the common seal of said corporation, and signed by the president or the presiding member of said corporation; and such deed when acknowledged by such officer to be the act of the corporation prescribed for other conveyances for lands, shall be recorded in the recorder's office of the county where the land lies, in like manner with other deeds.—R. S. '08, § 858.

Sec. 990 M. A. S. May Appoint Agent to Convey Real Estate.

That corporations, domestic and foreign, may, by written powers executed in the manner provided for the conveyance of real estate by corporations, appoint agents or attorneys in fact

to convey their real estate; and all conveyances executed by such agents or attorneys in fact in the name of the corporation shall pass the legal title of such corporation to the real estate thereby conveyed, as effectually as if such conveyances had been executed by the corporation in the manner provided by law for the conveyance of real estate by corporations; and it shall not be necessary to affix the seal of the corporation to any conveyance so executed by such agent or attorney in fact.—R. S. '08, § 859.

The above sections 842 and 989 M. A. S. are only declaratory of the universal method of conveying corporate realty. Formal leases and written contracts are signed and sealed in the same way. The acknowledgment is by the president or other head officer. Acknowledgment by the secretary is not necessary. The presence of the seal is *prima facie* proof that the corporation authorized the making and delivery of the deed to which it is attached.—Owens v. Olathe M. Co., 6 Colo. App. 1, 39 Pac. 980; Union M. Co. v. Bank, 2 Colo. 226.

The secretary is the custodian of the seal and supposed to be the officer who affixes it and who attests the signature of the president.

Short Forms of Deeds.

By Act of 1917, p. 158, § 808r⁵ M. A. S. short forms of deeds and mortgages are provided for. They may be used by corporations as well as individuals. The statute is a cheap concession to popular ignorance of the laws of conveyancing. A similar act was passed in 1887 and repealed in 1889. The whole set of short forms should be discarded.

Power to Lease.

A corporation has unquestionable power to lease the whole or any part of its property, not going to the extent of depriving it indefinitely of the control of its assets. Where for more than one year, under the Statute of Frauds, it should be in writing.

Under Sec. 997 M. A. S., mining and manufacturing companies are given power to lease for not exceeding five years without vote of stockholders.

The formal conclusion and subscription of a technically drawn deed, lease or other contract of a corporation is—

Witness the corporate name and seal of said company.

THE EDELMIRA MINING COMPANY,

(CORPORATE SEAL.)

By *Lou D. Sweet*,
President.

Attest:

E. E. Chase,
Secretary.

By section 990 M. A. S. they are authorized to make power of attorney to sell lands, the section providing that conveyances executed under such power do not require the corporate seal.

Acknowledgment By Corporation.

STATE OF COLORADO, COUNTY OF CLEAR CREEK, SS.

I, John Tomay, a notary public in and for said county, do hereby certify that Cora J. Seifried, president of the Bank of Georgetown, who is personally known to me, and personally known to be such president and the same person who as such president subscribed the corporate name and caused the corporate seal of said bank to be affixed to the within indenture, personally appeared before me this day and acknowledged the same to be his free and voluntary act and deed as such president and the free and voluntary act and deed of said corporation for the uses and purposes therein specified.

Witness my hand and notarial seal this first day of July, A. D. 1917.

My commission expires

(NOTARIAL SEAL.)

John Tomay,
Notary Public.

It is not necessary, and in fact is not good form, to add the acknowledgment of the secretary. The secretary is the attesting witness to the seal, not the executing officer.

Where a corporation without complying with the statute buys or sells real estate the deed is not void, but passes title.—Fritts v. Palmer, 132 U. S. 282.

As to deeds to or from Masonic and other like lodges, see p. 147.

Laches and acquiescence by stockholders validate irregular corporate conveyance.—Holmes v. Jewett, 55 Colo. 187, 134 Pac. 665.

CHAPTER XL.

MORTGAGE.

Sec. 992 M. A. S. Foreclosure or Execution Sale of Property and Franchises.

Whenever the property, rights and franchises of any corporation organized under the laws of this State, other than franchises granted by any municipality, shall have been or shall hereafter be sold bona fide under execution or by foreclosure, under order of court or by virtue of deed of trust, to another corporation, then the corporation purchasing shall take said property, rights and franchises, other than franchises above excepted, with all the rights and powers subject to all the duties and liabilities of the corporation whose property is so sold, for the term of existence of the corporation acquiring said rights;

Provided. That when any corporation whose property, rights and franchises are under mortgage or deed of trust and whose charter is about to expire shall fail, neglect or refuse to file a certificate of extension of its charter, then the owners and holders of such mortgage or deed of trust may file such extension in like manner and with like force and effect as if the same had been done by the corporation, and any extension heretofore made by the parties purchasing under such foreclosure is hereby declared to be legal and valid.—R. S. '08, § 864.

[Contracts for sale of railroad equipment, sections 6172-6176 M. A. S.]

The above section relates solely to forced sales of the property and franchises of one corporation to another corporation. It must necessarily have but limited application and we find no judicial decisions under it. The sale of corporate property is common enough, but the sale or attempted sale of corporate franchises is a very different

matter. No levy on execution could cover the franchises unless authorized by statute or by special decree.

The proviso to section 992 M. A. S. covers the instance where the security might be endangered by the expiration of corporate life, allowing the security holder to make the extension.

The first paragraph of the section refers to forced sales of the property and franchises of one corporation and their purchase by another, and is material only where such companies are common carriers or hold such franchises as would be lost by non-use.

The forced sale of corporate property amounts merely to a transfer of title, but where franchises are sold it amounts to an assumption of the duties of the sold out company, and the purchaser becomes in a sense its successor.

Ordinary Mortgages.

Unless prohibited by special legislation, any corporation can place a mortgage on its property to secure borrowing or a debt already due. It requires no meeting of stockholders, not even to cover a bond issue, though in the latter case such approval by stockholders is common and advisable; a resolution of the board of directors is sufficient authority.

Where two directors as president and secretary, with the knowledge of the third, signed the mortgage, there was full corporate action to uphold it.—*Denver & C. Inv. Co. v. Rudolph*, 47 Colo. 380, 107 Pac. 816.

As to mortgages by foreign corporations, see Sec. 1057 M. A. S.

By Mining or Manufacturing Company.

On page 176 is printed the paragraph of section 997 M. A. S. as amended by Act of 1921, forbidding mortgage by a mining or manufacturing company except on

order of a majority of the stock at a stockholders' meeting.

In *Carlsbad v. New*, 33 Colo. 389, 81 Pac. 34, a mortgage not so authorized was held void. But in *Dillon v. Myers*, 58 Colo. 492, 146 Pac. 268, the *Carlsbad* case was overruled and it was held that the mortgage could be attacked only by the stockholders, not by creditors.

This *Dillon* case cites and follows with approval *Firestone Co. v. McKissick*, 24 Colo. App. 294, 134 Pac. 147, and *Westerlund v. Black Bear M. Co.*, 203 Fed. 599, to the same effect.

Only the company by its stockholders can defeat a mortgage issued in disregard of section 997 M. A. S.—*Elder v. Western M. Co.*, 237 Fed. 967.

A mortgage by a coal company on non-mineral land is not within the statute.—*Firestone Co. v. McKissick*, 24 Colo. App. 294, 134 Pac. 147.

A mineral water company was held to be a manufacturing corporation in *Carlsbad v. New*, above cited, which was not overruled on this point.

Chattel Mortgages.

A form of acknowledgment of chattel mortgage by corporations is prescribed by Sec. 622 M. A. S.

"This mortgage was acknowledged before me this.....day of.....19...., by.....(president or other head officer) for (naming corporation) mortgagor." Followed, of course, by the signature, seal and date of commission of the notary.

Corporate mortgages or deeds of trust, which include items of personal property, are not to be considered as chattel mortgages under Sec. 621 M. A. S.

In *Jones on Chattel Mortgages*, Sec. 114, it is said that stock may be the subject of a chattel mortgage. But the citations do not seem to bear out the proposition and we do not concede it. A share of stock is like a promissory note, the evidence of property rather than property itself.—*Spalding v. Paine*, 81 Ky. 416.

CHAPTER XLI.

CONTRACTS.

In theory the sole contracting power of the corporation is in the board of directors, and the formal contracts of corporations involving large amounts are usually preceded by resolution that the president execute and the secretary attest the execution of the proposed contract. But certain officers have the right to make contracts such as the title of their office suggests. And the company is bound without any specific contract, just as an individual, where it receives benefits for which in law or equity it should make payment, or where it is estopped to deny the debt or has ratified that which was irregular in its inception.—*McKenzie v. Poorman Mines*, 88 Fed. 111.

Power of Corporations to Contract.

In the absence of charter restrictions the power of a corporation to make contracts is usually measured by the general objects and purposes of the incorporation, and it is presumed that any proper contract may be made whose scope and tendency are manifestly to further the design and purpose of its creation. The same rule may be applied in given cases to general agents of such corporations.—*Spangler v. Butterfield*, 6 Colo. 356.

Long time and unusual contracts made without specific authority or approval of the board of directors are not within the implied powers of the executive officers of a corporation.—*Bangor Co. v. American Slate Co.*, 203 Pa. 6; *Patton v. Ligonier Coal Co.*, 12 Pa. Dist. 456.

Several private corporations having similar interests formed an association for the protection of the rights common to all. By the authority of those to whom they committed the management of their common affairs, attorneys were employed and a litigation carried on for several years, with the knowledge, and to the profit of

all. All are liable to the attorneys' bill, even though the association be regarded as without legal existence.—*Fort Morgan Co. v. Sterling Co.*, 64 Colo. 222, 171 Pac. 72.

A solvent corporation may dispose of its assets as the stockholders see fit, so long as present creditors are not injured.—*Pueblo Foundry & M. Co. v. Lannon*, 68 Colo. 131, 187 Pac. 1031.

Where stockholders of a corporation were associated under a written agreement, giving the corporation power to levy assessments on stock with a provision for forfeiture of stock for nonpayment, and the stock was nonassessable except for the agreement, an assessment on the stock could not be recovered in an action against its owner; forfeiture being the only penalty for failure to pay.—*Quintet Oil Co. v. Big Five Oil Co.*, 205 Pac. 949.

Form of Contract.

In a formal written agreement the corporation is usually styled "The.....Company, a corporation organized under the laws of the State of.....," and it is proper to add "doing business in the County of....., State of....."

And the concluding paragraph may read:

"Witness, the corporate name and seal of said company."

The Ancient Briton Tin Mining Company,
By Lloyd George, President. (Corporate Seal.)

Attest: Arthur Balfour, Secretary.

But whenever it is clear upon the face of the paper that it is intended to bind the corporation and not the persons or officers named in or signing it, the company is bound, and it has been so held under almost every conceivable form of execution.

A contract signed by the individual names of officers may be shown to have been adopted as the contract of the corporation, the real party in interest.—*Williams v. Uncompahgre Co.*, 13 Colo. 469, 22 Pac. 806.

If by either custom or by-law a corporation permits

a corporate note to be signed by other than its proper executive officers it will nevertheless be bound by it.—*Foster v. Ohio-Colo. Co.*, 17 Fed. 130.

A note signed "For the Gold Glen Mining, M. & S. Co., D. C. Miller, President," held to be the note of the corporation.—*Gold Glen Co. v. Dennis*, 21 Colo. App. 284, 121 Pac. 677.

Contracts of Officers With the Company.

Corporate officers can contract with the company the same as individuals, but in such cases their acts are open to strict scrutiny, because in dealing with the company they cannot divest themselves of their trust relations to it.—*St. Joe Co. v. Bank*, 10 Colo. App. 339, 50 Pac. 1055.

The president or a director may be employed by the corporation as a clerk or to do any other work outside his official duties as a hired employee; and if so employed his wages is a preferred claim under the Bankrupt Act.—*In re Eagle Ice Co.*, 241 Fed. 393.

The plaintiff was elected managing director and a contract agreed to by the corporation that he was to receive a certain large salary for one year. A by-law at the time authorized the board by majority vote to remove a director. Under such by-law the board passed a resolution removing the plaintiff after he had served a few months. The court held that the power to remove a director did not justify such removal after contract made with plaintiff to fill the office for a definite time.—*Cuppy v. Stollwerck*, 216 N. Y. 591, 111 N. E. 249.

The facts of the case in *Morgan v. King*, 27 Colo. 539, 63 Pac. 416, were that the State National Bank had become the equitable owner of certain mining stock which it sold to certain of its directors who made a large profit out of the transaction. The opinion considers at length the relation of the corporation to its directors, and among other things holds that any director's purchase from the company is voidable at the election of the corporation,

and that the profits earned by the directors who bought the stock were the property of the bank or of the stockholders suing on refusal of the bank to bring suit.

But where there were overlapping claims in conflict with those of the company, and the company was involved in litigation and with no funds or property on which to raise funds, and the conflicts were purchased and the litigation settled by certain of the directors, with the full consent of the board, the settlement being to the betterment of the company, the transaction was upheld.—*Mackey v. Burns*, 16 Colo. App. 6, 64 Pac. 485.

Where the stockholders of a mining company refused to contribute to the funds necessary to work the mine and the company's lease was forfeited, the president of the corporation had the right to take a new lease for his own benefit.—*Hall v. Nash*, 33 Colo. 500, 81 Pac. 249.

Where a majority of the board, without the assent of the stockholders, sold stock to other directors in settlement of a corporate debt, though at a fair price, the sale was held constructively fraudulent and to be set aside at the suit of the stockholders.—*Mosher v. Sinnott*, 20 Colo. App. 454, 79 Pac. 742.

But not without provision for payment of the original debt, when the debt would otherwise be barred by the statute.—*Id.*

A loan to their company by its president and another director upon a 20 per cent commission, the corporation not knowing that its officers were the real parties, is a rescindable contract.—*Bensiek v. Thomas*, 66 Fed. 104.

The president of a corporation had made and signed company notes payable to himself for money borrowed from himself. The court held the notes good on account of the value received by the company and its long acquiescence.—*In re Eastman Oil Co.*, 238 Fed. 416.

Where the two active directors of a corporation used its funds to pay their individual debts they became liable to the company's creditors, and when they were able so

to do because of the neglect of the third director to pay any attention to the company's business he became equally responsible with them.—*Nix v. Miller*, 26 Colo. 203, 57 Pac. 1084.

When a member of a social club advances to it money to be paid only out of surplus revenues there is no absolute promise of payment, and the certificate issued to him in such form becomes a debt only when he shows that the condition referred to exists, or has been by wrongful mismanagement prevented from existing.—*Rollins v. Denver Club*, 43 Colo. 345, 96 Pac. 188.

Trust Relations of the Company.

A corporation is the trustee of its property for the benefit of its stockholders.—*Glengary M. Co. v. Boehmer*, 28 Colo. 1, 62 Pac. 839.

A corporation owning and operating a ditch becomes a trustee for its stockholders and is bound to protect their interests.—*Farmers D. Co. v. Agricultural D. Co.*, 22 Colo. 513, 45 Pac. 444.

The relations of a director to his company and the inhibition against his making a private gain out of the misfortunes of his company are fully considered in *Fishel v. Goddard*, 30 Colo. 147, 69 Pac. 607. There a director had bought in a large stock of goods of the company at a chattel mortgage sale, to which chattel mortgage he was not a party. The court held that the director had the right to bid, but he must bid full value; that the difference between the real value and the bid was the property of the creditors of the company, and a judgment in favor of a creditor for a sum not exceeding such difference was upheld without requiring proof of actual fraud.

Where there is antagonism between the interest of parties as individuals and as corporate officers resulting in unfair preference to the individual interest whatever contract so results is voidable. Parties in fiduciary rela-

tion cannot use either their knowledge or their power to the detriment of their correlates.—*Burnes v. Burnes*, 137 Fed. 782.

When a director contracts with the company he cannot represent himself and the board by acting as the board's agent. Where other members of the board act for the company the transaction is not impeachable in respect to the contracting parties.—*Crymble v. Mulvaney*, 21 Colo. 203, 40 Pac. 499.

The holders of notes against a company offered to discount them, the company being well able to accept the offer. Instead of accepting it on behalf of the company a director caused it to be made to himself personally, and it was ruled that he must account to the extent of the discount allowed to him.—*Young v. Columbia Co.*, 53 Oregon 438, 99 Pac. 936, 101 Pac. 212.

Directors are not bound to disclose to those from whom they purchase stock their private knowledge of facts tending to increase the value of the stock.—*Ryder v. Bamberger*, 172 Cal. 791, 158 Pac. 753.

CHAPTER XLII.

ACTIONS BY STOCKHOLDERS AGAINST THE COMPANY.

Suits brought by one or more stockholders on behalf of all others in like situation for alleged fraud or mismanagement of the directors or other officers are of common occurrence, and in such cases the company is generally a necessary party as well as the offending officers.

But the rule is that where the company is a necessary party and is the moving party—that is, where it should be the plaintiff—the stockholders cannot bring the suit in their names until after request made upon the company it has refused to take action, except where it is obvious upon the facts that such request would have

been unavailing.—*Morgan v. King*, 27 Colo. 539, 63 Pac. 416; *Smith v. Bulkley*, 18 Colo. App. 227, 70 Pac. 958; *Ide v. Bascomb*, 18 Colo. App. 415, 72 Pac. 62.

In suit for an accounting against a corporate officer the company is a necessary party, and if it refuses to become plaintiff it must be made defendant.—*Peck v. Peck*, 33 Colo. 421, 80 Pac. 1063.

To give stockholders redress against the officers of a corporation there must have been a demand upon the company to bring suit, except where it is manifest that such demand upon the company would have been of no avail.—*Miller v. Murray*, 17 Colo. 408, 30 Pac. 46; *Byers v. Rollins*, 13 Colo. 22, 21 Pac. 894; *Arkansas R. L. Co. v. Farmers Co.*, 13 Colo. 587, 22 Pac. 954; *Holmes v. Jewett*, 55 Colo. 187, 134 Pac. 665.

In cases of this character it is always advisable to make this formal demand even where the case comes within the above exception, and when presumably it would be refused unless some emergency as to time compels action at once.

In the Federal courts a demand upon the board before a stockholder can maintain suit is made necessary by rule 94.—*Miller v. Murray*, 17 Colo. 408, 30 Pac. 46; *Heinz v. Nat. Bank*, 237 Fed. 942.

Minority stockholders have the right to bring suit to set aside a collusive judgment.—*Paxton v. Heron*, 41 Colo. 147, 92 Pac. 15.

Stockholders who vote in favor of any corporate act will not be heard to set it aside. Their transferees are equally bound, and when stock is purchased for the purpose of attacking a past transaction the purchasers standing in court is not good.—*Boldenweck v. Bullis*, 40 Colo. 254, 90 Pac. 634.

The members of an incorporated church bear to it the same relation as do stockholders to a corporation organized for profit, and they cannot appeal to the courts for relief until they show that they have exhausted all

other means of relief before applying to the court.—*Horst v. Traudt*, 43 Colo. 445, 96 Pac. 259.

A complaint between stockholders and surviving directors of a defunct corporation, alleging that the property could not be divided, and asking for partition, for sale, and distribution of the proceeds, held to state a cause of equitable cognizance, and should be regarded as a bill to compel performance of a duty by the survivors, and a demurrer thereto should not have been sustained, notwithstanding the use of the word partition.—*Stuart v. Chaney*, 206 Pac. 386.

Where the stockholders have no equitable right they cannot assert any such supposed right, or obtain relief in respect thereto by acting through the corporate entry.—*Pueblo Foundry & M. Co. v. Lannon*, 68 Colo. 131, 187 Pac. 1031.

CHAPTER XLIII.

DE FACTO CORPORATIONS—IRREGULARITIES IN ORGANIZATION.

Where there are such irregularities in the execution or purported filing of the articles that it cannot be said that a legal corporation has ever been created, but it nevertheless has assumed to do business and exercise its asserted franchises, it may be estopped when attacked by creditors to deny its corporate existence, and will be regarded as a de facto corporation and its assets held for its debts.

“If any one of these statutory requirements is omitted, such omission is a fatal defect and confers no de jure right to exercise corporate franchises.”—*Bates v. Wilson*, 14 Colo. 140, 24 Pac. 99.

In this case the articles were held invalid by a clause attempting to allow to certain officers the corporate powers which the statute says must be exercised by the board of directors.

But one who is a party to irregular articles, becomes an officer in the attempted corporation and conveys property to it, is estopped to deny its corporate existence.—*Id.*

The same subject is discussed in *Jones v. Aspen Co.*, 21 Colo. 263, 40 Pac. 457, where it is held that the burden of proof when a party asserts its corporate capacity is upon the company, and that to constitute a de facto corporation there must be a substantial attempt to comply with the statute and a user or attempted user of corporate functions.

Parties who have assumed to act as officers of a de jure corporation are estopped to deny their official character.—*Jenet v. Nims*, 7 Colo. App. 88, 43 Pac. 147; *Jenet v. Albers*, 7 Colo. App. 271, 43 Pac. 452.

There can be no collateral attack on the charter or articles of a duly organized corporation.—*U. P. R. Co. v. Colo. Postal Tel. Co.*, 30 Colo. 133, 69 Pac. 564.

An irrigation district is a public corporation and may be a de facto corporation where it has assumed to act under color.—*Fisher v. Pioneer Co.*, 62 Colo. 538, 163 Pac. 851.

A de facto corporation may do whatever acts a de jure corporation may do and such acts can only be questioned by the state.—*Id.*

The corporate existence and the validity of the acts of a de facto corporation whose user is established cannot be attacked collaterally upon the ground of irregularity or omission in its certificate of incorporation.—*Denver v. Mullen*, 7 Colo. 345, 3 Pac. 693.

In *Duggan v. Colo. Mortgage Co.*, 11 Colo. 113, 17 Pac. 105, the articles of the company were not acknowledged, but the court held that there could be no attack upon the articles for this defect in a collateral proceeding.

It is the filing of the certificate that brings the corporation into existence.—*Humphreys v. Mooney*, 5 Colo. 283. In this case the articles had been filed with the Secretary of State, but not with the county recorder. The

court held the articles not subject to collateral attack on this ground.

In *Grand River B. Co. v. Rollins*, 13 Colo. 4, 21 Pac. 897, the articles had been filed with the county recorder and work done for the company between that date and the date of filing with the Secretary of State. The court held that the filing with the county recorder made the company a de facto corporation and they were liable for the debts.

The omission from the articles of a mining company the clause referring to the assessability of its stock is not a fatal defect in its organization.—*Humphreys v. Mooney*, 5 Colo. 282.

The acknowledgment to the articles in which the notary failed to certify that the parties were personally known to him is not defective. The statute requiring such item in the acknowledgment of deeds does not extend to the acknowledgment of articles of incorporation.—*Peo. v. Cheeseman*, 7 Colo. 376, 3 Pac. 716.

One who deals with a corporation in its corporate capacity cannot question the regularity of its organization in a collateral proceeding.—*Cowell v. Colo. Spgs. Co.*, 3 Colo. 82.

Upon a bill between corporations concerning their respective franchises the court will not inquire into the regularity of their steps toward legal incorporation.—*Denver Ry. v. Denver City Ry.*, 2 Colo. 673.

A corporation having been recognized by legislative enactments all inquiry into its original organization is precluded.—*Cowell v. Colo. Spgs. Co.*, 3 Colo. 82.

The omission to comply with any of the statutory requirements in the corporate articles does not impose any individual liability on the organizers.—*Humphreys v. Mooney*, 5 Colo. 283.

Parties who associate and do business under a corporate name remain personally liable when they file no

articles whatever and have no color to be called a corporation.—Harrill v. Davis, 168 Fed. 187.

When parties with whom organizers contract are informed that a company is to be formed and assume the debts on such contracts the personal liability ceases.—*Id.*

A party who deals with an association as a corporation is not estopped to deny its corporate existence when the association does not go far enough to have such color of organization as would make them a de facto corporation.—*Id.*

Where an irregular organization is alleged the parties assuming to act under a corporate name may become personally responsible for debts, but a suit cannot be maintained in such case against the individuals and the alleged corporation jointly.—Smith v. Colo. Ins. Co., 14 Fed. 399.

The Aspen Hardware Co. brought suit alleging itself to be a corporation. So defective was its organization that the court held it to be not even a de facto corporation but allowed the complaint to be amended to show a partnership doing business under the assumed name.—Jones v. Aspen Hardware Co., 21 Colo. 263, 40 Pac. 457.

Where a defendant is sued as a corporation it cannot deny its own existence. If it is not a corporation it cannot as such appear and plead.—W. U. T. Co. v. Eyser, 2 Colo. 141.

This case was reversed on other points in 91 U. S. 495. But if an association of persons doing business under a style which would suggest it to be a corporation in a suit against it is described as a corporation we cannot see why the association should not appear as such and deny the incorporation. The opinion cited was under common law practice, and we do not consider it as binding at this time.

In the case of K. of P. v. Powell, 25 Colo. 154, 53 Pac. 285, is considered the question of what name to use in suits where lodges are subdivided into sub or branch lodges.

A very instructive case on the origin of the doctrine of de facto corporations, in a contest between rival boards of

directors, is *Stratton-Mass. Co. v. Davis*, 111 N. E. 375, 222 Mass. 549.

Everything done by a *de facto* corporation, while acting as such with the connivance of the public, and which would have been of legal effect if it had been a corporation in law, must be held of the same effect.—*Fisher v. Pioneer Co.*, 62 Colo. 538, 163 Pac. 851.

Property acquired by a *de facto* corporation does not, upon its dissolution, revert to the former owner, nor is any right created in favor of other parties, which right did not exist during the corporate life time.—*Id.*

To constitute a corporation *de facto*, there must be three elements: (1) A law under which it may lawfully be formed; (2) a *bona fide* attempt to form it according to law; (3) and a user or attempt to use its corporate powers.—*Bonfils v. Hayes*, 70 Colo. 336, 201 Pac. 677.

Adjunct Company—Incorporating by Buying Out Dormant Corporation.

The stock of a dormant company was bought in and its name adopted by new parties to save the cost of an original incorporation. There had been another corporation used as an “adjunct” to the dormant corporation. The court held that the reorganization was not liable for the debts of the adjunct company, though it certainly would have been liable for the debts of the dormant company. The case does not decide what an “adjunct” company is.—*Liebhardt v. Wilson*, 38 Colo. 1, 88 Pac. 173.

CHAPTER XLIV.

QUO WARRANTO.

Quo warranto is a direct proceeding by the State to oust a corporation of its franchises—that is, to inquire by what authority persons are pretending to exercise cor-

porate franchises which they either never rightfully acquired or afterwards forfeited—and the judgment, if the relator is successful, is that the corporation be dissolved or that the so-called corporation does not exist.

The parties to the action are (1) the people, who are the plaintiff; (2) the relator—that is, the party who gives the information to the representative of the people—and (3) the defendant, the alleged usurper, called the respondent.

It lies wherever there has been a material non-compliance with the requirements to be observed in the making and filing of the articles or where there has been a forfeiture by non-compliance with statutes which imposed forfeiture as a penalty for such non-compliance.

But it is not the policy of the commonwealth to enforce forfeiture of its franchises for every omission or violation of statutory duties. It is rather their duty to waive it. And for these reasons it can be brought only by the district attorney or Attorney General, the representative of the people, unless such officer refuse to bring it, and the private relator has a substantial grievance.

It is not allowed at the instance of one who has a mere claim for damages or is a discontented stockholder or a rival corporation.—*Central Road Co. v. Peo.*, 5 Colo. 40; *Peo. v. Grand River Br. Co.*, 13 Colo. 11, 21 Pac. 898; *Peo. v. Colo. Eastern Ry.*, 8 Colo. App. 301, 46 Pac. 219.

In a quo warranto case the burden of proof is on the respondent to show its compliance with the law.—*Lyons Toll Road Co. v. Peo.*, 29 Colo. 434, 68 Pac. 275.

The Supreme Court will not take original jurisdiction of a quo warranto case where no imperative reason exists for such action, but will let the District Court pass on it in the first instance.—*Peo. v. Am. Sm. & R. Co.*, 30 Colo. 275, 70 Pac. 413.

An irrigation officer cannot be deprived of his office by quo warranto proceedings under a statute which says that upon conviction of certain misconduct the office shall

be forfeited. There must be trial and conviction.—*Burkholder v. Peo.*, 59 Colo. 99, 147 Pac. 347.

The *People v. Lockhard* was a proceeding against officers of an irrigation district. The court held that any land holder liable to tax might become the relator and fully considered the question as to the interest of the people and the private interest, holding that the alleged illegal formation of the district and the intended bond issue made it a matter of public interest.—26 Colo. App. 439, 143 Pac. 273.

In *State R. R. Commission v. People*, the court held that no judicial action would be taken where the Attorney General had refused to bring the suit and that it would not question the validity of a Statutory State Board at the instance of private parties interested.—44 Colo. 345, 98 Pac. 7.

The merger of a Colorado and a Kansas insurance company cannot be attacked by the suit of private relators, though interested. The opinion gives cogent reasons why only the state officials are allowed to institute such proceedings.—*Albach v. Fraternal Union*, 100 Kan. 511, 164 Pac. 1065.

CHAPTER XLV.

MANDAMUS.

The practice in mandamus proceedings is regulated by sections 341-354 of the Code. It issues to compel the performance of any act which the law enjoins as the specific duty of a corporation or its officers, or to compel admission to a corporate office to which the injured party is entitled, and which has been denied him by illegal corporate action.

It lies to compel action, but not to control discretion.

Water Cases.

It is the appropriate remedy to compel the delivery of water to which a stockholder in a ditch company may be

entitled.—*Peo. v. Farmer's Canal Co.*, 25 Colo. 202, 54 Pac. 626; *Golden Canal Co. v. Bright*, 8 Colo. 144, 6 Pac. 142; *Combs v. Ag. Ditch Co.*, 17 Colo. 146, 28 Pac. 966; *Peo. v. Farmers High Line*, 25 Colo. 202, 54 Pac. 626. But is not the remedy to adjudicate a perpetual right to the use of the water.—*Townsend v. Fulton Irr. Co.*, 17 Colo. 142, 29 Pac. 453.

In *Ag. Ditch Co. v. Rollins* it is ruled that in mandamus proceedings in irrigation cases the court would consider the case with reference to the irrigation season.—42 Colo. 267, 93 Pac. 1125; *Northern Colo. Co. v. Pouppirt*, 47 Colo. 490, 108 Pac. 23.

Other Instances.

Mandamus is the proper remedy where the city refuses to levy a special tax.—*Perkins v. Peo.*, 59 Colo. 107, 147 Pac. 356. Or to enforce the payment of a judgment.—*Lake County v. Schradsky*, 43 Colo. 84, 95 Pac. 312. Or of a county warrant.—*Denver v. Bottom*, 44 Colo. 308, 98 Pac. 13.

It will lie to compel a public service corporation to furnish its customers—in this instance to furnish steam heat.—*Seaton Mtn. Co. v. Idaho Spgs. Co.*, 49 Colo. 122, 111 Pac. 834. And against a gas company for refusal without just cause to furnish gas.—*Cox v. Malden Co.*, 199 Mass. 324, 85 N. E. 180.

Or to restore a party to an office from which he has been wrongfully ousted.—*Gillett v. Peo.*, 13 Colo. App. 553, 59 Pac. 72.

Where Refused.

It will not lie to compel transfer of stock where the relator's right to it is disputed.—*Cook Co. v. Buck*, 59 Colo. 368, 149 Pac. 95. And it is questionable whether it will be allowed in any case to compel such transfer.—*Ag. Ditch Co. v. Rollins*, 42 Colo. 267, 93 Pac. 1125; *Butterfly Co. v. Brind*, 41 Colo. 30, 91 Pac. 1101.

It does not lie to compel a mutual insurance company to levy an assessment to pay the policy.—*Great Western M. A. Ass'n v. Colmar*, 7 Colo. App. 275, 43 Pac. 159.

Practice.

In mandamus proceedings against a corporate officer to enforce a stockholder's right to inspect the corporate books the company need not be made a party.—*Merrill v. Suffa*, 42 Colo. 195, 93 Pac. 1099.

Mandamus to allow stockholders to inspect the books of several distinct companies cannot be maintained in a single action.—*Id.*

Where properly alleged and proved, damages may be adjudged along with the mandatory relief.—*Bell v. Thomas*, 49 Colo. 76, 111 Pac. 76; *Parr v. Sexson*, 56 Colo. 491, 138 Pac. 768.

The County Court has jurisdiction to issue the writ.—*Mann v. Peo.*, 16 Colo. App. 475, 66 Pac. 452.

Mandamus will lie to compel the issuance of stock by a corporation to those entitled thereto.—*Capitol Co. v. Haldeman*, 66 Colo. 265, 180 Pac. 758.

CHAPTER XLVI.

EMINENT DOMAIN.

Sec. 2616 M. A. S. Compensation for Lands—Commissioners—Jury.

That private property shall not be taken or damaged for public or private use without just compensation; and in all cases in which compensation is not made by the State in its corporate capacity, such compensation shall be ascertained by a board of commissioners of not less than three freeholders, or by a jury when required by the owner of the property, as hereinafter prescribed.—R. S. '08, § 2415.

[See bill of rights, Constitution, article 2, sections 14 and 15.]

[See Constitution, article 16, section 7.]

**Sec. 2617 M. A. S. Petition to Assess Compensation—
Contents—Parties.**

That in all cases where the right to take private property for public or private use without the owner's consent, or the right to construct or maintain any railroad, spur or side track, public road, toll road, ditch, bridge, ferry, telegraph, flume, or other public or private work or improvement, or which may damage property not actually taken, has been heretofore or shall hereafter be conferred by general laws or special charter, upon any corporate or municipal authority, public body, officer or agent, person or persons, commissioner or corporation, and the compensation to be paid for in respect of the property sought to be appropriated or damaged for the purposes above mentioned, cannot be agreed upon by the parties interested; or in case the owner of the property is incapable of consenting, or his name or residence is unknown, or he is a non-resident of the State;

It shall be lawful for the party authorized to take or damage the property so required, or to construct, operate and maintain any railroad, spur or side track, public road, toll road, ditch, bridge, ferry, telegraph, flume, or other public or private work or improvement, to apply to the judge of the District or County Court, either in term time or vacation, where the said property or any part thereof is situate, by filing with the clerk a petition, setting forth, by reference, his or their authority in the premises; the purpose for which said property is sought to be taken or damaged, a description of the property, the names of all persons interested therein as owners or otherwise, as appearing of record, if known or if not known, stating that fact, and praying such judge to cause the compensation to be paid to the owner to be assessed; if the proceedings seek to affect the property of persons under guardianship, the guardians or conservators of persons having conservators, shall be made parties defendant, and if of married women their husbands shall also be made parties; persons interested whose names are unknown, may be made parties defendant by the description of the unknown owners; but in all such cases an affidavit shall be filed by or on behalf of the petitioner, setting forth that the names of such persons are unknown.

State Institutions.

In cases where the property is sought to be taken or damaged by the State for the purpose of establishing, operating or maintaining any state house, charitable or other state institution or improvement, the petition shall be signed by the gov-

ernor, or such other person as he shall direct, or as shall be provided by law.

Private Ways of Necessity, Etc.

Under the provisions of this Act private property may be taken for private use, for private ways of necessity, for reservoirs, drains, flumes or ditches, on or across the lands of others for agricultural, mining, milling, domestic or sanitary purposes. The amendment of said Act shall not be construed to affect any right, either as to remedy or otherwise, nor to abate any suit or action or proceeding existing, instituted or pending under the Act so hereby amended.—R. S. '08, § 2416.

[For vacation of streets, alleys, etc., see sections 7304-7329 M. A. S.]

[City or town may exercise right of eminent domain for public improvements, section 5950 M. A. S.]

[Towns and cities may condemn for water, light and gas works. Sections 7537 and 7226, sub. 67, M. A. S.]

[Right to condemn for ditches and reservoirs, etc., sections 1094, 3612-3616, 3728 M. A. S.]

[See, also, Constitution, article 16, section 7.]

[Eminent domain for drainage. Section 3645 M. A. S.]

[Irrigation districts may condemn for reservoirs, etc. Sections 3451 and 3975 M. A. S.]

[Condemnation by penitentiary commissioners for state canal or reservoir. Section 4032 M. A. S.]

Sec. 2622 M. A. S. Jury.

Any party to any proceedings brought under the provisions of this Act, before the appointment of commissioners, as in section six aforesaid provided, and before the expiration of the time for the defendant to appear and answer, may demand a jury of freeholders residing in the county in which the petition is filed, to ascertain, determine and appraise the damages or compensation to be allowed; such demand may be made in the pleadings, or by a separate writing filed with the clerk.

Such jury shall consist of six persons, unless a larger number shall be demanded by any party to the proceeding; but in no case shall the number of jurors exceed twelve, and any party so demanding a larger number than six jurors shall advance the fees for such additional jurors for one day's service according to the rate allowed jurors in the District Court.—R. S. '08, § 2421.

[Section 6 referred to is section 2621 M. A. S.]

**Sec. 2625 M. A. S. Inspection of Premises by Jury—
Expenses—Trial—Verdict—Costs.**

When the jury has been selected, and have taken an oath faithfully and impartially to discharge their duties, the court or judge may, at the request of any party to the proceeding, and in the discretion of the court or judge, order that the jury go upon the premises sought to be taken or damaged, in charge of a sworn bailiff, and examine the premises in person; *Provided*, That such order shall require the party making such request to advance a sum, to be fixed by the court or judge in such order, sufficient in the opinion of the court to defray the necessary expenses of such examination, and in default of such party forthwith advancing such sum so fixed as aforesaid, such order shall be held for naught upon such trial before a jury; the court or judge shall preside in the same manner and with like powers as in other cases; evidence shall be admitted or rejected by the court or judge according to the rules of law, and at the conclusion of the evidence the matters in controversy may be argued by counsel to the jury, and at the conclusion of the arguments the court or judge shall instruct the jury in writing.

The jury shall retire for deliberation, in charge of a sworn officer, and when they have agreed upon a verdict the same shall be returned into court. If the jury shall fail to agree, it may be discharged by the court or judge, and thereupon another jury shall be summoned as soon as practicable, in the same manner as before, and like proceedings be had with such jury or successive juries, until a verdict is had.

Any party feeling aggrieved by such verdict may move before such court or judge for a new trial, in the same manner and for the same causes as in actions at law, and the refusal of such court or judge to grant a new trial may be excepted to and assigned for error.

If the amount of compensation ascertained by any such jury, or by a board of commissioners as provided in this Act, shall not be in excess of any lawful tender of compensation found by the court or judge to have been made by the petitioner to the party to whom such compensation shall be awarded, no costs provided to be taxed under the provisions of this Act shall be allowed to such party.—R. S. '08, § 2424.

Sec 2626 M. A. S. Order of Possession on Payment.

The judge or court shall, upon such verdict, proceed to adjudge and make such order as to right and justice shall per-

tain, ordering that petitioner enter upon such property and the use of the same, upon payment of full compensation as ascertained as aforesaid; and such order with evidence of such payment, shall constitute complete justification of the taking of such property.—R. S. '08, § 2425.

Sec. 2633 M. A. S. Essentials of Verdict or Commissioners' Report.

The report of the commissioners or the verdict of the jury in every case shall state:

First.—An accurate description of the land taken.

Second.—The value of the land or property actually taken.

Third.—The damages, if any, to the residue of such land or property; and

Fourth.—The amount and value of the benefit.—R. S. '08, § 2432.

Sec. 2636 M. A. S. Tunnel Companies.—Rights of Way.

Any foreign or domestic corporation, organized or chartered for the purposes, among other things, of carrying, transmitting, or delivering ore, mineral, or other property for hire by means of a tunnel or tunnels, shall have the right of way for the construction, operation and maintenance of any such tunnel or tunnels of sufficient size and dimensions for such purposes, through or over any patented or unpatented mines, mining claims, or other lands, without the consent of the owner thereof, if such right of way is necessary to reach the place to or from which it is proposed to carry such ore, mineral, or other property.—R. S. '08, § 2435.

Sec. 2637 M. A. S. Pipe Line Companies.—Rights of Way.

Any foreign or domestic corporation organized or chartered for the purpose, among other things, of conducting or maintaining a pipe line for the transmission of power, water, air, or gas for hire to any mine or mining claim, or manufacturing, milling, mining, or public purpose, shall have the right of way for the construction, operation and maintenance of such pipe line or pipe lines for such purposes, through any lands, without the consent of the owner thereof, where such right of way is necessary for the purpose for which said pipe line shall be used.—R. S. '08, § 2436.

Sec. 2638 M. A. S. Electric Power Companies—Rights of Way.

Any foreign or domestic corporation, organized or chartered for the purpose, among other things, of conducting and maintaining electric power transmission lines for the purpose of providing power or light by means of electricity for hire, shall have a right of way for the construction, operation and maintenance of such electric power transmission line through any patented or any unpatented mine or mining claim, or other land without the consent of the owner thereof, where such right of way is necessary for the purposes proposed.—R. S. '08, § 2437.

Sec. 2639 M. A. S. Tramway Companies—Rights of Way.

Any foreign or domestic corporation organized or chartered for the purpose, among other things, of conducting and maintaining for hire an aerial tramway for transporting ores, minerals, waste material or other property from any mine or mining claim by means of an aerial tramway, shall have the right of way for the construction, operation and maintenance for such tramway, and for all necessary towers and supports thereof over and across any intervening mining claim, lands, or premises, without the consent of the owner thereof, where such right of way is necessary for the purposes proposed.—R. S. '08, § 2438.

Sec. 2640 M. A. S. Common Carriers—Fees.

Any such corporation or corporations, organized or chartered for any or all of the purposes hereinbefore mentioned shall be deemed a common carrier or common carriers and shall fix and charge only a reasonable and uniform rate to all persons who desire the use of any such tunnel, pipe line, electric power transmission line or aerial tramway.—R. S. '08, § 2439.

Sec 2641 M. A. S. Distance Governs Rate.

In fixing the rate to be charged its patrons, as provided in section 5 hereof, any such transportation tunnel company or aerial tramway company shall take into consideration the distance over which the material to be transported shall be carried.—R. S. '08, § 2440.

[Section 5 above referred to is section 2640 M. A. S.]

Sec. 2642 M. A. S. Compensation for Rights of Way.

Any such corporation shall make due and just compensation for such right of way to the owners of the property through which it is proposed to construct, operate and maintain such tunnel, pipe line, electric transmission line, or aerial tramway, and when the parties cannot agree upon such right of way and the amount of compensation to be paid the owner of such property, the same shall be determined in manner as now provided by law for the exercise of the right of eminent domain.—R. S. '08, § 2441.

Sec. 2643 M. A. S. Lode Owner Entitled to Mineral Matter.

The owner of any vein, lode, mining claim or other property over which it is proposed to construct a tunnel as herein provided, shall have the right to all ore and mineral taken from such vein or lode at the intersection thereof with such tunnel.—R. S. '08, § 2442.

Sec. 2644 M. A. S. Lode Owner Have Access to Tunnel.

The owner or owners of such vein or lode so intersected shall have the right, at any reasonable time and from time to time, upon application to the superintendent or other managing officer of such tunnel corporation, to enter such tunnel with their surveyors and inspectors for the purpose of inspecting and making a survey of any such vein or lode, and the owners of such veins and lodes, and their employes shall have the right of ingress and egress through said tunnel at all reasonable times.—R. S. '08, § 2443.

Sec. 2645 M. A. S. Tunnel Company Acquires No Right to Vein Matter.

Nothing in this Act shall be so construed as to give such tunnel corporation the right to follow any vein or lode without the consent of the owner or owners, and when any vein or lode is encountered in driving any such tunnel, such tunnel corporation shall only have the right of way to cross such vein or lode at such angle as may be suitable for the convenient operation of the tunnel.—R. S. '08, § 2444.

Sec. 2646 M. A. S. Tunnel Company File Map of Course.

Any such tunnel corporation desiring to avail itself of the benefit of this Act, shall file with the county clerk and recorder

of the county or counties in which it is proposed to operate, a map or survey of its proposed tunnel, for which it desires a right of way, together with a statement showing the route of the proposed tunnel, and the patented or unpatented mining claims or other property through which it is proposed to construct the same, and may file supplementary maps and surveys upon any lawful change of its proposed line of tunnel.—R. S. '08, § 2445.

Sec. 2647 M. A. S. Pipe Line Company File Map of Course.

Any such pipe line corporation, desiring to avail itself of the benefit of this Act, shall file with the county clerk and recorder of the county or counties in which it is proposed to operate, a map or survey of its proposed pipe line, for which it desires a right of way, together with statement showing the route of the proposed pipe line, and the patented or unpatented mining claims or other property through which it is proposed to construct the same, and may file supplementary maps and surveys upon any lawful change of its proposed line.—R. S. '08, § 2446.

Sec. 2648 M. A. S. Electric Power Company File Map of Course.

Any such electric power transmission corporation, desiring to avail itself of the benefit of this Act, shall file with the county clerk and recorder of the county or counties in which it is proposed to operate, a map or survey of its proposed line, for which it desires a right of way, together with a statement showing the route of the proposed line, and the patented or unpatented mining claims or other property through which it is proposed to construct the same, and may file supplementary maps and surveys upon any lawful change of its proposed line.—R. S. '08, § 2447.

Sec. 2649 M. A. S. Tramway Company File Map of Course.

Any such aerial tramway corporation, desiring to avail itself of the benefit of this Act, shall file with the county clerk and recorder of the county or counties in which it is proposed to operate, a map or survey of its proposed route, for which it desires a right of way, together with a statement showing the route of the proposed tramway, and the patented or unpatented mining

claims or other property, over or across which it is proposed to construct the same, and may file supplementary maps and surveys upon any lawful change of its proposed line.—R. S. '08, § 2448.

Sec. 2650 M. A. S. Tunnel and Tramway Companies Transport Waste and Ore on Payment of Toll.

Any such tunnel or aerial tramway corporation or corporations shall, subject to its or their reasonable regulations, accept from the owners of mining properties all ore and waste, and other materials loaded in cars and delivered to it or them along its or their line of tunnel or aerial tramways for transportation, and afford facilities for the handling of the same at such place, upon payment to it or them, at the rates established and fixed by such tunnel or aerial tramway corporation, or corporations.—R. S. '08, § 2449.

Sec. 2651 M. A. S. Pipe Line and Power Companies Furnish Power on Payment of Fees.

Any such pipe line corporation, or electric power transmission corporation or corporations shall, subject to its or their reasonable regulations, furnish to the owners of mining properties power from said pipe lines or electric power transmission lines upon payment to it or them at the rates established and fixed by such corporation or corporations.—R. S. '08, § 2450.

Sec. 2662 M. A. S. May Enter on Lands to Survey—Liability.

Any corporation formed under the provisions of this Act, for the purpose of constructing a road, ditch, tunnel or railroad, may cause such examination and survey as may be necessary to the selection of the most advantageous route, and for such purpose, by its officers, agents or servants, may enter upon the lands of any person or corporation, but subject to liability for all actual damages which shall be occasioned thereby.—R. S. '08, § 2462.

[The Act above referred to is the general Act on incorporation.]

Upon the maxim that the interest of the individual is subordinate to the interest of the people is founded the law of eminent domain, which means the right to take private property for public use. It is allowed to all cor-

porations which have a "line," and this includes railroad, telegraph, telephone, ditch, toll road and tunnel companies. Bridge and ferry companies have the same right.

The procedure is by petition, followed by summons. The court then appoints three commissioners to appraise the damages, unless the respondent demands a jury of freeholders to perform the same office.

Section 2622 M. A. S. in so far as it allows the condemnor to demand a jury is in conflict with Art. 2, Sec. 15, of the Bill of Rights.—*Southwestern Co. v. Hickory Ditch Co.*, 18 Colo. 489, 33 Pac. 275.

No pleadings are required of the respondent, as the only point to be settled is the amount of damages to be paid.

The measure of damages is expressed in the Act which prescribes the form of verdict.

The value of the land at the date of the trial not at the date of filing the proceedings is to determine the damages.—*D. & R. G. Ry. v. Griffith*, 17 Colo. 599, 31 Pac. 171.

The right to condemn land is not given to any private person nor to any corporation except one which is of public or quasi public character. The only exception is the case of ditches, which by special constitutional provision may be condemned by the owner, whether incorporated or not incorporated. (Const., Art. 16, Sec. 7.) Where section 2664 M. A. S. gives the owner of any mine the right to condemn a spur to connect with a railroad, a corporate owner is doubtless contemplated.

Under section 2636 M. A. S. above printed, a tunnel company, to exercise the right of eminent domain, must declare itself to be a common carrier of ores.

Under section 2639 M. A. S., an "aerial tramway," purporting to carry ores for hire, may condemn. We can see no possible distinction between an aerial tramway and one laid on the ground. It had been decided before the passage of this statute that a tramway could not condemn its right of way because it was not a public use.—*Peo. v.*

District Court, 11 Colo. 147, 17 Pac. 298. Whether the present statute would be sustained is a close question, but the tendency of later decisions is to sustain acts based on the theory that the business of carrying ores is a public use.—Mining Rights, 15th Ed. 248.

By the terms of sections 2646-2649 M. A. S. above printed a tunnel, pipe line, power or tramway company, to exercise this right, must file with the recorder a map of its route and statement showing what claims it purposes to cross.

Any company formed to conduct "electrical energy" in any form is given by the terms of section 2660 M. A. S. the right of condemnation and the right of way across and along public highways. For the exercise of such latter right it is to pay not less than one-half per cent. of its gross earnings. The section is not only turgid and involved, but almost unintelligible and parts of it susceptible of no practical construction.

A reservoir site may be condemned by a private corporation for power purposes. The word "milling," in Sec. 14, Art. 2, Const., is synonymous with "manufacturing."—Denver P. Co. v. D. & R. G. Co., 30 Colo. 204, 69 Pac. 568.

The right of eminent domain may not be exercised over a prior condemnation where the new use destroys the prior use.—*Id.*

A park company was allowed to condemn a road right of way in Crystal Park Co. v. Morton, 27 Colo. App. 74, 146 Pac. 566.

The same case holds that a de facto corporation may exercise the right.

The condemning party cannot in the same suit contest defendant's title and assess damages. The bringing of a suit under the Eminent Domain Act is a concession of title in the respondent.—Colo. M. Ry. v. Croman, 16 Colo. 381, 27 Pac. 256.

The right of way to a ditch company does not revert upon cessation of its corporate life, but title to it remains in its grantee if it has been sold, and goes to the trustees as part of the corporate assets if it has not been sold.—*Bailey v. Platte Canal Co.*, 12 Colo. 230, 21 Pac. 35.

The Constitution gives the right to any railroad to connect with another and to cross the right of way of an older company.—Art. 4, Sec. 15.

It does not require incorporation to condemn right of way for a ditch. In this exceptional case any person or persons may condemn.—*Downing v. More*, 12 Colo. 316, 20 Pac. 766.

The suit cannot be dismissed at the condemnor's option. After the original deposit is made the defendant has a vested right in it.—*Denver & N. O. R. R. Co. v. Lamborn*, 8 Colo. 380, 8 Pac. 582.

Where an irrigation company has taken possession of land and built a reservoir, the owner can waive the trespass and recover the value of the land.—*Snowden v. Ft. Lyon Co.*, 238 Fed. 495.

Tramway and Power Companies.

There are no special statutory requirements as to the articles of a tramway or power company other than are exacted of any other business corporation unless they desire to exercise the right of Eminent Domain, in which case what is required as to filings has been stated in this chapter. The following forms provide for such exercise of the right of condemnation.

Articles of Electric Power Company.

ARTICLE 1. The name of said company shall be *The Blue River Electric Power Company*.

ARTICLE 2. The objects of said company are to construct and maintain a pipe line for the transmission of water and to construct plants for the creation of power from the water so to be carried and to construct lines of wire for the transmission and distribution of electric power for mining, milling, manufac-

turing and other public purposes for hire at a uniform and reasonable rate to mines, mills and manufactories, and to all other persons or corporations having legal right to demand the same.

And to acquire by appropriation, donation and purchase all water rights which are necessary to procure title to the water to be transmitted and to acquire by location, purchase, donation or by legal condemnation proceedings the right of way for said pipe line and the lines of transmission and distribution.

The point of diversion of water into said pipe line is at the proposed dam across Blue river as marked and staked on the ground about 300 yards above Big Placer dump at the upper end of the town of Breckenridge, and the course of the pipe line is by metes and bounds as follows, to-wit: (insert field notes.)

Preamble, other articles and acknowledgment same as on page 39.

Same. Second Form.

ARTICLE 1. The name of said company shall be *The Bear River Electric Power Company*.

ARTICLE 2. The objects of said company for which it is created are to utilize the water power of Bear river and to create from such water power electrical energy for distribution in the counties of Routt and Rio Blanco in the State of Colorado. The place of diversion of water is in said county of Routt at the intersection of Bear river with the line between ranges 101 and 102 west of the 6th principal meridian, and from such point it is intended to carry the water by ditch and pipe line five miles down to the point selected for the erection of power plant and for the creation of such electrical energy.

The course of said ditch and pipe line is as follows: (insert field notes.)

And, further, the objects of said company are to construct, maintain and operate lines of wire to mines, mills, oil wells, ranches and factories in said counties to the extent that such power may reach and there shall be demand for power. And to sell or rent at uniform and reasonable rates to all persons needing such power for manufacturing, milling, mining or any other lawful purposes. And to appropriate the water of said Bear river at said point of diversion for such purposes and otherwise to acquire the necessary water power by gift or any form of purchase. And to acquire by location, donation or condemnation the right of way for said ditch and pipe line and for all lines of wire running out from the same. And in general terms to do all

things necessary to the business of making and distributing electrical energy, and selling or hiring to all persons on fair and equal terms the benefit or use of the same.

And to acquire by contract or purchase, all easements, waters, appropriations or corporate rights and franchises of other persons and companies which may have been or shall be acquired along any of said lines which can be legally held and practically used in connection with the corporate rights acquired by the formation of this company.

Preamble, other articles and acknowledgment same as on page 39.

Articles of Aerial Tramway Company.

ARTICLE 1. The name of said company shall be *The Cooper Tunnel Tramway Company*.

ARTICLE 2. The objects for which said company is created are to construct and maintain for hire as a common carrier at reasonable and uniform rates to all persons an aerial tramway for transporting ores, minerals and waste material from the mouth of the Cooper tunnel on the northern slope of Anglo Saxon mountain in Griffith mining district, county of Clear Creek, in said State of Colorado, to the base of said mountain and to carry mining supplies from the base of mountain to the mouth of tunnel. And in aid of said objects we claim for said company the right to condemn its right of way under the terms of sections 2639 and 2642 of Mills Annotated Statutes of Colorado. And to further acquire and hold such right of way by purchase or donation from the owners of claims to be crossed, as well as by location.

Preamble, other articles and acknowledgment same as page 39.

CHAPTER XLVII.

ULTRA VIRES.

The above heading, which means "beyond the powers," is the name of a plea that corporate action has been indulged in which was an exercise of corporate power beyond the limitations fixed by the company's charter. Where

the alleged ultra vires action is ended and over, as a rule no remedy exists and in many cases no real harm has been done, but as to executory contracts it is usually a good defense.

A contract completed, done and executed, though ultra vires, stands beyond the reach of judicial interference.—*Dillon v. Myers*, 58 Colo. 493, 146 Pac. 268.

Where a corporation is pleading ultra vires to escape from a contract the strict construction rule does not apply.—*Cuero Packing Co. v. Alamo Mfg. Co.* (Tex.) 194 S. W. 492.

The plea of ultra vires will not be allowed as a defense to enable a corporation to keep the benefit of its wrong and deny redress to the plaintiff.—*Denver Fire Ins. Co. v. McClelland*, 9 Colo. 12, 9 Pac. 771; *Rollins v. Pueblo County*, 15 Colo. 104, 25 Pac. 319; *Am. Nat. Bk. v. Hammond*, 25 Colo. 367, 55 Pac. 1090.

A business corporation cannot legally buy and sue upon a claim for damages for an injury done to its assignor.—*Pueblo v. Shutt Inv. Co.*, 28 Colo. 524, 67 Pac. 162.

A bank organized under the statute is without power to engage in mining business or to enter into a contract compelling it to do so.—*Weston v. Estey*, 22 Colo. 334, 45 Pac. 367.

Ultra vires will not avail as a defense where the dealings were open, shown on the bills and the profits of its branches enjoyed by the main bank.—*Kipp v. Miller*, 47 Colo. 598, 108 Pac. 164.

Where a national bank had bought in a mine to protect a debt it was held that it could make necessary expenditure to put it in shape for sale, but could not lawfully carry on regular mining operations and expenditures of its funds for such purposes might be recovered from the directors.—*Cooper v. Hill*, 94 Fed. 582.

When an act done by a private corporation is not per se illegal nor malum prohibitum, but is simply ultra vires, and is not a matter of public concern, but merely affects

the interest of the stockholders, the latter may so act as to deprive themselves of the right to challenge its validity.—*Bensiek v. Thomas*, 66 Fed. 104.

When a defendant corporation has received money and used it its want of corporate power to make the contract under which it received the money is no defense to an accounting.—*Manville v. Belden M. Co.*, 17 Fed. 425.

A corporation cannot contract to give free personal privileges to the officers of another corporation or their families.—*W. U. Tel. Co. v. K. P. Ry.*, 1 Colo. L. R. 77.

A mere investment company has no power to become surety on an appeal bond.—*Eagan v. Mahoney*, 21 Colo. App. 209, 121 Pac. 108.

Mingling Corporate With Personal Business.

The president of a company signing the corporate name to a note, which is in reality his personal debt, is personally liable to pay the same.—*Wheeler v. Mineral Farm Co.*, 31 Colo. 110, 71 Pac. 1101.

In the case of the *Albro M. Co. v. Chinn*, 20 Colo. App. 238, 77 Pac. 1097, a company had been organized and the mining property conveyed to it. The vendor received practically all the stock which he hypothecated for money to work the mine. He continued to operate the mine in his own name. He was also director and treasurer. The court held that the company could not be held for mine debts contracted by him.

Where all the stock of a corporation is owned by one person or where there are dealings between the corporation and its directors, no other person having an interest at the time, the doctrine of ultra vires does not apply and none but creditors of the corporation can complain of any action taken.—*Sargent v. Palace Cafe Co.*, 175 Cal. 737, 167 Pac. 146.

CHAPTER XLVIII.

CORPORATE KNOWLEDGE AND ADMISSIONS.

The president of a corporation cannot put off his official character at will; while holding the office all his acts within the scope of his powers are official.—*Union M. Co. v. Bank*, 1 Colo. 532.

Where a majority of the directors have knowledge of the purchase of machinery by the promoters and promise to pay the debt or with such knowledge enjoy the benefit of the purchase, the company is liable.—*Possell v. Smith*, 39 Colo. 127, 88 Pac. 1064.

Where a corporate officer is suffered to exercise authority on any lines for a considerable time, the company will be presumed to have granted him the power so to act and will be bound by his admissions.—*Union M. Co. v. Bank*, 2 Colo. 248; *Webb v. Smith*, 6 Colo. 365; *W. C. T. U. Co. v. Taylor*, 8 Colo. 75, 5 Pac. 826; *Robinson Co. v. Johnson*, 10 Colo. App. 135, 50 Pac. 215.

Corporate action may be proved by showing the approval of certain bills by a majority of the board acting separately, where such was the ordinary mode of doing business by the company.—*Longmont D. Co. v. Coffman*, 11 Colo. 551, 19 Pac. 508.

Knowledge acquired by a corporate official in the protection of his own private interests is not knowledge chargeable to the company.—*Pueblo Sav. Bk. v. Richardson*, 39 Colo. 319, 89 Pac. 799.

The knowledge by the cashier, of a forgery, is not to be imputed to the bank, where it was to the interest of the cashier to conceal the forgery.—*Harriman Nat. Bank v. Seldomridge*, 240 Fed. 111.

No formal action of the board can be insisted on where the corporation is a family affair—husband and wife owning all the stock except enough to enable the third director,

the daughter, to qualify.—*Rubie Co. v. Princess Co.*, 31 Colo. 158, 71 Pac. 1121.

The knowledge of an officer or agent obtained in the line of his duty is actual notice to the city.—*Denver v. Dean*, 10 Colo. 375, 16 Pac. 30.

In general terms the above proposition is correct and the converse of the proposition, that knowledge not acquired in connection with corporate action is not the knowledge of the corporation is also true. But the application of the rule to the facts will often be found a close question upon which legal advice should be taken. Knowledge of the president was held to bind the company in *Patterson v. DeLong*, 11 Colo. App. 103, 52 Pac. 687, and the same as to notice to a cashier in *Cooper v. Hill*, 94 Fed. 582, while the knowledge of the promoters and directors was held no notice to their companies in *Franklin M. Co. v. O'Brien*, 22 Colo. 129, 43 Pac. 1016, and *Murphy v. Gumaer*, 12 Colo. App. 472, 55 Pac. 951.

An instruction that "as a general rule what the directors of a corporation know" * * * the company knows, and the knowledge of the directors may be inferred from circumstances "was held error" in *Conqueror Co. v. Ashton*, 39 Colo. 133, 90 Pac. 1124.

A letter written by a director present at a meeting of what took place at the meeting is evidence as an admission by the company.—*Golden Age Co. v. Langridge*, 39 Colo. 158, 88 Pac. 1070.

Although directors to bind the corporation must act as a board this does not prevent their individual admissions being received as evidence of a debt already due against the company.—*Bingel v. Brown*, 43 Colo. 281, 96 Pac. 449.

Corporations are bound by the admissions of their agents and by their book entries and correspondence the same as individuals.—*Webb v. Smith*, 6 Colo. 365; *Cons. Gregory Co. v. Raber*, 1 Colo. 512; *U. P. Ry. v. Hepner*, 3 Colo. App. 313, 33 Pac. 72.

When a director of a company does an act in excess of his delegated powers the company is not charged with knowledge of such act.—*Sanford Cattle Co. v. Williams*, 18 Colo. App. 378, 71 Pac. 889.

A corporation is bound by the knowledge of its officers where they sell stock on false representations and the company accepts the money paid for it.—*Zang v. Adams*, 23 Colo. 408, 48 Pac. 509.

Knowledge of an outstanding equity in real estate acquired by an individual before incorporation will not bind the company becoming owner of such real estate, the individual also becoming a stockholder and director.—*Reed v. Munn*, 148 Fed. 738.

The company is bound to accept the legal consequences of the neglect of its officers to defend against an action in court.—*German Am. Co. v. Bank*, 26 Colo. App. 242, 142 Pac. 189.

The knowledge of various officers and agents of a corporation held sufficient without proof of official action to bind the company to a judgment alleged to have been for the benefit of persons other than the company.—*Id.*

A member of an incorporated social club is charged with knowledge of the expenditure of its income and profits and with the management of its affairs by the directors.—*Rollins v. Denver Club*, 43 Colo. 345, 96 Pac. 188.

A corporation is chargeable with knowledge of its organizers, who also constitute a majority of its board of directors, concerning the invalidity of a deed through which it acquires title to property.—*Treat v. Schmidt*, 69 Colo. 190, 193 Pac. 666.

A director is held to know, or be able to ascertain, what is alleged against the corporation in an action pending when he assumes office, and which is not determined for several months thereafter.—*Campbell v. Creighton*, 63 Colo. 478, 167 Pac. 975.

CHAPTER XLIX.

RATIFICATION—ESTOPPEL—LACHES.

Ratification.

Anything within the corporate powers of the company, though done irregularly or without previous authority, is binding upon the company, the same as if regularly authorized by resolution of the board if subsequently, with knowledge of all the facts, ratified by the company.—*Hoosac Co. v. Donat*, 10 Colo. 529, 16 Pac. 157; *Victoria Co. v. Fraser*, 2 Colo. App. 14, 29 Pac. 667; *Bingel v. Brown*, 43 Colo. 281, 96 Pac. 449; *Firestone Co. v. McKissick*, 24 Colo. App. 294, 134 Pac. 147.

Ratification after full knowledge of the facts cures all defects of want of authority.—*Lincoln M. Co. v. Williams*, 37 Colo. 193, 85 Pac. 844.

It is the duty of the president to call meetings of the board when the rights of contracting parties require corporate action. And when he has promised to call such meeting it will be presumed that it was done and the proof of non-action assumes a ratification.—*Union M. Co. v. Bank*, 1 Colo. 532.

A corporation cannot be held to have ratified its agents' contracts except on proof that it had full knowledge of all the facts.—*Conqueror Co. v. Ashton*, 39 Colo. 133, 90 Pac. 1124.

Knowledge of the directors with failure to repudiate the president's action is sufficient proof of ratification.—*Henry v. Colo. L. & W. Co.*, 10 Colo. App. 14, 51 Pac. 90.

The action of a meeting outside the state may become valid by acquiescence.—*Wilson's Estate*, In re, 85 Ore. 604, 167 Pac. 580.

Estoppel.

A corporation cannot keep the benefit of an unauthorized contract and plead the agent's want of authority

as a defense to an accounting for what it received.—*Rollins v. Pueblo County*, 15 Colo. 104, 25 Pac. 319.

A stockholder who attends the stockholder's meeting is estopped to deny the corporate existence.—*Callahan v. Chilcott D. Co.*, 37 Colo. 331, 86 Pac. 123.

Corporate acts which may be lawfully done and are done by the consent or authority of all the then stockholders cannot be questioned by one who afterwards becomes a stockholder.—*Mackey v. Burns*, 16 Colo. App. 8, 64 Pac. 485.

The benefits of a by-law made for the protection of the stockholders may be waived by them and their acquiescence in the uniform practice of the company to disregard it amounts to waiver.—*Grand Val. Co. v. Fruita Co.*, 37 Colo. 483, 86 Pac. 324.

A person who has dealt with a corporation, recognizing it as such, is not permitted when sued in respect of such dealings to deny its corporate existence.—*Plummer v. Struby Co.*, 23 Colo. 190, 47 Pac. 294.

A new board cannot undo rights vested by the action of the former board.—*Colo. F. & I. Co. v. State Land Board*, 14 Colo. App. 85, 60 Pac. 367.

A corporation though not liable on its note may be liable for value received.—*Burns v. National M. Co.*, 23 Colo. App. 545, 130 Pac. 1037.

A mortgage had been executed without vote of stockholders as required by Sec. 997 M. A. S. The statute declared such mortgage "absolutely void." The Court held that void meant only voidable (which is an often decided proposition) and that the company having got the money advanced on the mortgage, was estopped to contest it.—*Dillon v. Myers*, 58 Colo. 492, 146 Pac. 268.

Equitable estoppel is the indispensable foundation of such laches, acquiescence or ratification as will bar a suit.—*Elder v. Western M. Co.*, 237 Fed. 967.

It is not true that estoppel of a corporation to deny its existence relieves its operators of their liability if

it does not exist.—*Bonfils v. Hayes*, 70 Colo. 336, 201 Pac. 677.

Laches.

Where a grievance is alleged, but the adventure is hazardous and expenditures are allowed to be risked by the defendants, whatever the plaintiff's rights might have been if seasonably asserted, unreasonable delay is fatal to recovery.—*Hall v. Nash*, 33 Colo. 501, 81 Pac. 249.

Rescission.

To rescind a sale of stock on account of false representations the buyer must act promptly, but he is entitled to a reasonable time to investigate.—*Dawson v. Flintom*, 195 Mo. App. 75, 190 S. W. 972.

Collateral Attack.

Held that under the facts and circumstances of the case that the corporate capacity could be questioned in a collateral attack.—*Bonfils v. Hayes*, 70 Colo. 336, 201 Pac. 677.

CHAPTER L.

PERSONAL LIABILITY OF DIRECTORS.

Sec. 1009 M. A. S. Declaring Fraudulent Dividend.

If the directors, trustees or other officers or agents of any corporation shall declare and pay any dividend when such corporation is insolvent, or any dividend the payment of which would render it insolvent or which would diminish the amount of its capital stock, all directors, trustees, agents or officers assenting thereto shall be jointly and severally liable for all debts of such corporation then existing, and for all that shall thereafter be contracted while the capital remains so diminished.—R. S. '08, § 872.

In *Royado Co. v. Rieke*, 62 Colo. 447, 163 Pac. 292, the president of the defendant company was held per-

sonally liable for fraud in declaring a fraudulent dividend, and a body judgment against him sustained.

Sec. 1010 M. A. S. Filing False Statement or Report.

If any certified report or statement made, or public notice given, by the officers of any corporation, shall be false in any material representation, all the officers who shall have signed the same, knowing it to be false, shall be jointly and severally liable for all damages arising therefrom.—R. S. '08, § 876.

Sec. 1051 M. A. S. Failure to File Annual Report.

And if any such corporation, joint stock company, or association shall fail, refuse or omit to file the annual report as aforesaid, and to pay the fees prescribed therefor, within the time above prescribed, all the officers and directors of said corporation shall be jointly and severally and individually liable for all debts of such corporation, joint stock company or association that shall be contracted during the year next preceding the time when such report should by this section have been made and filed, and until such report shall be made and filed.

And as further penalty for such failure, refusal or omission, of the president and secretary of such corporation, a joint stock company or association to comply with the conditions of this law, they shall be subject to a fine of not to exceed fifty dollars to be recovered before any court of competent jurisdiction; and it is hereby made the duty of the Secretary of State immediately after the expiration of sixty (60) days from the first day of each January to report the fact to the district attorney having jurisdiction of the county in which the business of such corporation is located, and the district attorney shall, as soon thereafter as practicable, institute proceedings to recover the fine herein provided for, which shall go into the revenue fund of the county in which the cause shall accrue; in addition to which penalty on and after the going into effect of this act, no corporation, as above defined, which shall fail to comply with this act can maintain any suit or action, either legal or equitable, in any of the courts of this state upon any demand, whether arising out of contract or tort. *Provided*, that in case of absence refusal or inability to act of the president and secretary, of any company, corporation, association or joint stock company to file an annual report as above prescribed, then any director may execute and file such report within the thirty days next after the

expiration of the sixty-day period provided for in this act. This provision is made for the express purpose of protecting the directors and cannot be employed as a remedy to relieve the secretary or president from the imposition of the penalties provided for in this section.—L. '19, p. 359, § 14.

A director is not personally liable for the debts of the company except upon some individual wrong of his own doing or by failure to comply with the terms of the above statutes, to-wit:

1. He is liable for declaring fraudulent dividend under the above printed Sec. 1009 M. A. S.

2. In damages for making wilful false report, under the above printed Sec. 1010 M. A. S.

3. For failure to file the Annual Report required of his company, for all debts incurred during the year preceding the time when it should have been filed and "Until such report shall be made and filed," under the above printed paragraph of Sec. 1051 M. A. S., which is the final paragraph of the section giving the details of the annual report. The entire section is found on page 341.

Failure to File Annual Report.

Almost all the cases arise under the above paragraph requiring this report.

The requirement of an annual report is mandatory and non-compliance fixes the personal liability.—*Colo. Fuel Co. v. Lenhart*, 6 Colo. App. 511, 41 Pac. 834; *Ludington v. Heilman*, 9 Colo. App. 548, 49 Pac. 377; *Heilman v. Ludington*, 26, Colo. 326, 57 Pac. 1075.

Under section 1051 M. A. S. there is a liability for failure to file the annual report, and under section 1010 M. A. S. for filing a report "knowing it to be false." A complaint which alleges that a report was false and nothing more does not state a case under either section.—*Matthews v. Patterson*, 16 Colo. 215, 26 Pac. 812.

The fact that the company was not in debt at the time the annual report should have been filed is no defense to a debt contracted before the report is filed. The directors are liable for debts contracted during the period of default, although not yet due.—*Thatcher v. Salomon*, 16 Colo. App. 150, 64 Pac. 368.

The directors of a corporation, which fails to file an annual report by statute, are liable for the debts of the corporation, even though the report is subsequently filed before an action is brought.—*Edmisten v. Smith*, 67 Colo. 1, 185 Pac. 258.

What Directors Liable—Defective Report.

The fact that the defendant did not become a director until after the date when the report should have been filed does not relieve him, but where he did not become a director until after the debt was incurred he is not liable.—*Cavanaugh v. Patterson*, 41 Colo. 158, 91 Pac. 1117.

Directors whose term began after the indebtedness was incurred and after the default in filing are not liable.—*Austin v. Berlin*, 13 Colo. 198, 22 Pac. 433. •

A report filed but not verified is no compliance with the law.—*Colo. F. & I. Co. v. Lenhart*, 6 Colo. App. 511, 41 Pac. 834.

The absence of a seal is not fatal.—*Dart v. Hughes*, 49 Colo. 465, 109 Pac. 952. But when the secretary wrongfully withheld the seal he cannot hold the directors liable for his salary by reason of their failure to file the report.—*Wingett v. Williams*, 61 Colo. 392, 158 Pac. 139.

Time for Filing—One Year Limitation.

The last day for filing is March 2d. counting sixty days from January 1st. As to whether they can be filed later with any effect the language is not clear, but it might

be inferred from the words "until filed," in its last paragraph, that it would become operative as to future debts if filed after the sixty days. This construction is to some extent borne out by the wording of the opinion in *Thatcher v. Salomon*, 16 Colo. App. 153, 155, 64 Pac. 368. And it has been expressly so held in *Bovee v. Boyle*, 25 Colo. App. 165, 136 Pac. 467.

But filing after the lapse of the sixty days would certainly not relieve against debts for which liability had already accrued.—*Cannon v. Breckenridge Co.*, 18 Colo. App. 38, 69 Pac. 269.

In *Nolds v. Hendrie & B. Co.*, 56 Colo. 322, 138 Pac. 22, March 2d is made the date the company was in default, but obviously March 3d is such date by computation, excluding the first day of January.

The one year statute of limitations begins to run at date of the default of the directors and not from the date when the debt against the corporation matures.—*Hazleton v. Porter*, 17 Colo. App. 1, 67 Pac. 170; *Colo Fuel & I. Co. v. Lenhart*, 6 Colo. App. 511, 41 Pac. 834.

The one year limitation in the personal liability section begins to run from the expiration of the sixty-day period, not from the date of the debt.—*Clough v. Rocky Mtn. Co.*, 25 Colo. 520, 55 Pac. 809.

The period covered by the Act is the year preceding the time when the report should have been filed and until the report is filed. The year next preceding extends back and "dates from the sixtieth day after January 1."—*Bradford v. Gulley*, 10 Colo. App. 146, 50 Pac. 314; *Colo. F. & I. Co. v. Lenhart*, 6 Colo. App. 511, 41 Pac. 834; *Jenet v. Nims*, 7 Colo. App. 88, 43 Pac. 147; *Jenet v. Albers*, 7 Colo. App. 271, 43 Pac. 452; *Bovee v. Boyle*, 25 Colo. App. 165, 136 Pac. 467.

Construction—Debt and Judgment—Parties.

Section 1051 M. A. S. (failure to file annual report) is penal and to be strictly construed.—*Bovee v. Boyle*, 25

Colo. App. 165, 136 Pac. 467; *Steck v. Prentice*, 43 Colo. 17, 95 Pac. 552.

In *Tabor v. Commercial Nat. Bank*, 62 Fed. 383, it was held under the statute as it then existed that a judgment was a debt and not the mere evidence of a debt. But under the holdings above cited that the indebtedness accrues as soon as the default occurs and the liability exists for one year only it seems certain that the judgment would not be considered a debt unless such judgment was rendered within the same year that the original indebtedness was contracted.

Under the statute in force in 1882 on the same subject it was ruled that in action against the directors the corporation was not a proper co-defendant.—*Smith v. Colo. Ins. Co.*, 14 Fed. 399.

The word debts which is used both in sections 1009 and 1051 M. A. S. is referred to in the *Tabor* case and the *Bovee* case above cited, the *Bovee* case holding that a liability springing from a tort or a judgment founded on a tort is not such a debt as the statute covers.

Venue.

The annual report must be filed in the county where the company does business.—*Tabor v. Com. Nat. Bank*, 62 Fed. 383. The annual report is not now filed with the county recorder.

The local county of the corporation determines the venue of a suit to enforce the personal liability of the directors for failure to file annual report.—*Woodworth v. Henderson*, 28 Colo. 381, 65 Pac. 25.

Individual Fraud or Default.

Outside of all statutory points he is liable for acts of positive fraud, and, of course, is liable, like any other

stockholder, under section 1008 M. A. S. for any balance due on stock held by him and not fully paid for.

Where the two active directors of a corporation used its funds to pay their individual debts they became liable to the company's creditors, and when they were able so to do because of the neglect of the third director to pay any attention to the company's business he became equally responsible with them.—*Nix v. Miller*, 26 Colo. 203, 57 Pac. 1084.

A non-resident director leaving everything to the management of his co-directors is responsible for their misconduct. The liability of national bank directors for gross neglect is not limited to the statutory recovery under the Banking Act.—*McCormick v. King*, 241 Fed. 737.

Directors of national banks making false reports are personally liable to all persons suffering loss by such means.—*Chasbrough v. Woodworth*, 244 U. S. 72, 37 S. C. R. 579.

It is a misjoinder to sue the company and its directors, in the same action, to enforce personal liability for failure to file annual report, the liability of the company being based on contract, and that of the directors on tort.—*Clough v. Rocky Mtn. Co.*, 25 Colo. 520, 55 Pac. 809.

Any officer or employee of a bank receiving deposits, knowing the bank to be insolvent, is personally responsible for such deposit.—Sec. 356 M. A. S.

Directors of a corporation who fraudulently dispose of the corporate property, which pass to innocent parties, are personally liable to the creditors of the corporation for the value of the assets so disposed. Where the directors transfer such property to another corporation which is their mere creature and dummy, the corporation receiving the same is also liable for the value thereof. Execution was allowed against the body of the conspiring directors.—*Rayado Co. v. Rieke*, 62 Colo. 447, 163 Pac. 292.

CHAPTER LI.**PERSONAL LIABILITY OF STOCKHOLDERS.****Sec. 1008 M. A. S. To Extent of Face of Unpaid Stock.**

Each stockholder shall be liable for the debts of the corporation to the extent of the amount that may be unpaid upon the stock held by him, to be collected in the manner herein provided. Whenever any action is brought to recover any indebtedness against the corporation, it shall be competent to proceed against any one or more stockholders at the same time, to the extent of the balance unpaid by such stockholders upon the stock owned by them respectively, whether called in or not, as in cases of garnishment.—R. S. '08, § 873.

According to theory one dollar in money should be paid for each one dollar share of stock, but in practice this is rarely done. The company issues its stock to the stockholders perhaps at ten cents on the dollar. This is treated as a sale, and the stockholder assumes that he owns one dollar of stock, for which he has paid only ten cents. But in sales of this kind, when the company becomes insolvent, the law treats the ten cents as only a payment on the account to the company, and the holder is liable to contribute ninety cents if that much be necessary to pay the debts of the company.

Except for this unpaid balance there is no personal liability for corporate debts assumed by the stockholders—barring the statutory liability of banks and the few other instances mentioned in this chapter. He is not liable to any penalty for default or failure of the company in any respect. Such default or failure is chargeable only to the directors who bring it about.

In a supposable case stockholders would be held for the company's debts if it were attempted to increase the stock of the corporation without filing the necessary papers and not paying the statutory fees.—Sec. 1042 M. A. S.

The stockholders of title guaranty companies are liable to creditors to the extent of the face value of their stock.—Sec. 1088 M. A. S.

In *Buck v. Jones*, 18 Colo. App. 250, 70 Pac. 951, stock had been issued in exchange for mining claims upon which no discovery of mineral had ever been made. The court held that it was not a case of overvaluation, but a sale where no consideration whatever had passed; that the claims were void, and therefore nothing had been paid for the stock, and that the stockholders were personally liable to creditors under R. S. Sec. 1008 M. A. S.

This decision was not made by a court of last resort and its soundness may well be questioned. In ejectment between adverse claimants the want of discovery would of course be fatal. But the issue in the *Buck* case was the value of the land, not a question of title, and every mining man knows that a claim which has no discovery may have even great value when taken up to cover a blind ledge known to extend into the ground or placer gravel lying under a deep overburden. Where no other party has either discovery or possession, the possession of the first party in connection with the supposed existence of underlying mineral is property which may have value and is within the protection of the law.

Where the active stockholders of a company which is out of funds advance their own money from month to month to keep at work, with the understanding that they are to be repaid out of any ore found and sold, they do not become partners, such advances being merely loans to the corporation.—*Dodge v. Chambers*, 43 Colo. 366, 96 Pac. 178.

The real owner may be reached on a personal liability suit, though he held the stock in the name of another.—*Am. Alkali Co. v. Kurtz*, 134 Fed. 663.

And the broker in whose name the stock stood was held not liable.—*Id.*

Under section 1008 M. A. S. a joint action may be maintained against the corporation and the owners of unpaid stock.—*Smith v. Colo. Ins. Co.*, 14 Fed. 399.

300 PERSONAL LIABILITY OF STOCKHOLDERS.

The personal liability of stockholders may be enforced by suit in a Federal Court outside of the State imposing the liability.—*Bernheimer v. Converse*, 206 U. S. 516.

The procedure under R. S. '08, section 272 is a suit in equity on behalf of all the creditors and the assignee or receiver of an insolvent corporation has no right of action to enforce the liability.

The liability of the stockholders is double the par value of the stock held by them, and subscriptions already paid or still due cannot be deducted.

The entries in the bank books are proof against the stockholders as fully as against the bank itself.—*Zang v. Wyant*, 25 Colo. 551, 56 Pac. 565.

The case goes fully into the practice and procedure under this section.

Section 272 R. S. '08, is now superseded by section 355 M. A. S. of the Banking Act of 1913, but the same construction on these points would doubtless apply to the later section.

A judgment against a corporation in the absence of collusion is conclusive against the stockholders when subsequently they are sued on their personal liability.—*Montgomery v. Whitehead*, 40 Colo. 320, 90 Pac. 509.

Stockholders in state banks are liable for debts to the extent of double the par value of their stock under section 355 M. A. S. of the Banking Act printed on page 79. This section doubtless covers Savings Banks.

Sec. 398 M. A. S. Liability of Trust Co. Stockholders.

The stockholders shall be individually responsible for all debts or obligations contracted during the time of their being stockholders of such company equally and ratably to the extent of their respective shares of stock in such association and in addition thereto.—R. S. '08, § 309.

Section 391 M. A. S. is a similar section referring to trust, deposit and security companies, and section 398 M. A. S. is a repetition of the same liability as to trust companies alone.

Each shareholder in the bank is liable only to the extent of the stock he holds, and a judgment for the entire debt in excess of the value of the stock was reversed.—*Buenz v. Cook*, 15 Colo. 38, 24 Pac. 679.

This case arose before the passage of section 39 above printed, which now makes the liability twice the value of the stock instead of face value.

Before its repeal it had been held that the liability created by R. S. '08, Sec. 271 for failure to file semi-annual statements as required by section 270 R. S. '08, attaches at once upon failure, and the directors may be proceeded against without previous attempt to collect by suit against the bank. But the statute is penal and the one year limitation Act applies.—*Larsen v. James*, 1 Colo. App. 313, 29 Pac. 183.

The measure of damages is twice the face value of the stock and interest cannot be added.—*Adams v. Clark*, 36 Colo. 65, 85 Pac. 642.

The proper procedure to enforce personal liability under section 273 R. S. '08, is by suit in equity by one or more creditors for the benefit of all against all the stockholders.—*Id.*

Shareholders were held in *Kipp v. Miller*, 47 Colo. 598, 108 Pac. 164, for liabilities growing out of dealings with their branch banks.

Members of Odd Fellows lodges and other like orders are exempt from personal liability under Act of 1911, page 648, [§ § 3052, 3053 M. A. S.].

CHAPTER LII.

STOCK PLEDGED OR HELD IN TRUST.

Sec. 1011 M. A. S. Liability Where Stock Is Held in Trust or as Collateral.

No person holding stock in any corporation as executor, administrator, conservator, guardian or trustee, and no person

holding such stock as collateral security, shall be personally subject to any liability as stockholder of such corporation, but the person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly, and the estate and funds in the hands of such executor, administrator, conservator, guardian or trustee shall be liable in like manner and to the same extent as the testator of intestate, or the ward or person interested in such trust funds would have been if he had been living, and had been competent to act, and held the stock in his own name.—R. S. '08, § 874.

Sec. 1002 M. A. S. Stock Voted by Executors, Trustees, Pledgors, Etc.

Every executor, administrator, conservator, guardian or trustee shall represent the stock in his hands at all meetings of any such corporations, and may vote accordingly as a stockholder, and every person who shall pledge his stock may nevertheless represent the same at all meetings and vote accordingly.—R. S. '08, § 868.

The owners of stock pledged as collateral may represent and vote the stock at all meetings.—*Miller v. Murray*, 17 Colo. 409, 30 Pac. 46.

Where the stock of an insolvent bank is held by another bank, with nothing on the face of the certificate or the books of the bank, it cannot escape liability by showing that the stock was held as a pledge under section 1011 M. A. S.—*Adams v. Clark*, 36 Colo. 66, 85 Pac. 642.

Construing the above printed sections the court held that where stock was held by a trustee, but only as collateral to a debt, the real owner and not the trustee had the right to vote the stock.—*Nat. Bank v. Allen*, 90 Fed. 545.

The use of the word "trustee" following the name of the holder of the stock as a rule imposes notice on purchasers and others dealing with such stock that "some one whose name is not disclosed" has an interest in it, and the buyer must see to it that such stock is not being offered in fraud of the rights of the beneficiary.—*Cook*, Sec. 325.

Where stock is held in the name of a party as trustee he has presumably no power to sell without the assent of the beneficiary, and it is actionable negligence for a corporation to allow a transfer of such stock on the books of the company without any inquiry as to the trustee's authority. The word trustee is a warning that the holder is not the owner of the stock.—*Geyser-Marion M. Co. v. Stark*, 106 Fed. 558.

A silent pledge of which the purchaser had no notice does not vitiate the transfer to a bona fide buyer.—*Lomax v. Colo. Nat. Bank*, 46 Colo. 229, 104 Pac. 85.

A transfer of stock to a trustee, to whom a new certificate issues to secure a loan, is a pledge and not a chattel mortgage.—*Richardson v. Longmont D. Co.*, 19 Colo. App. 483, 76 Pac. 546.

And such issue is notice not only of the pledge, but of its subsequent foreclosure.—*Id.*

The pledgee of stock may maintain action to set aside an invalid assessment.—*Farmers' Canal Co. v. Henderson*, 46 Colo. 37, 102 Pac. 1064.

The pledge of stock noted by the secretary but not transferred, held not good against a later buyer of the stock.—*Ironstone Co. v. Equitable Co.*, 52 Colo. 268, 121 Pac. 174.

Stock held in name of the wife where she permits the husband to deal with it as his own, becomes liable for his debts.—*Wood v. Yant*, 27 Colo. App. 190, 149 Pac. 854.

The pledge of corporate stock is governed by M. A. S. § 1004. Pledgee who, for more than sixty days from date of the pledge, fails to cause the notation required by the statute, to be made, or fails to cause the amount of the loan for which the stock is pledged to be noted, loses his right as against creditors of, or innocent purchasers from, the stockholders.—*Hexter v. Shahan*, 66 Colo. 156, 180 Pac. 92.

As against the assignor or pledgor the stock vests in the assignee or pledgee; and the pledgee or assignee is not

affected, where the failure to comply with the statute is the fault of the corporation.—*Id.*

Where the complaint alleges the deposit of shares of stock as security for the payment of a note, the sale of the stock for more than the indebtedness, and the receipt by defendant of a certain part of the excess, for which plaintiff sues; and the answer not denying said allegations, the fact alleged in the answer that the stock was previously pledged for the payment of another note has no bearing on the cause of action, though the last mentioned note remains unpaid.—*Russell v. Cripple Creek State Bank*, 206 Pac. 160.

Plaintiff received in pledge from a company, corporate stock standing on the books of the corporation in the name of a third person. Defendant having judgment against the company levied upon the shares and became the purchaser. Plaintiff, though he had never complied with the statute as to the registration of the pledge was allowed to maintain an action to vacate the sale to the defendant.—*Snider v. Bourquin*, 68 Colo. 207, 188 Pac. 727.

CHAPTER LIII.

FRAUDS AND TORTS.

A corporation is liable for its frauds the same as an individual. A resolution of the board directing action upon which a charge of fraud could be predicated would be the direct fraud of the company itself, but in more instances it is the fraud of its officers and agents that makes it liable to third persons, or in as frequent instances the fraud is directed against the company itself—that is, the stockholders.

Loss to Investor a Natural Suggestion of Fraud.

The factor of uncertainty of result which always exists at the launching of a corporate venture, and the willingness

of some to advance funds and the hesitancy of others, are the groundwork often resulting in charges of fraud against promoters and officers.

A company is offered opportunity to purchase certain property. The offer is laid before the board of directors; perhaps before the stockholders. No funds are forthcoming. Some of the members then purchase on private account. The adventure proves successful and the stockholders then insinuate fraud against the successful investors.

The law of the case is that where the corporation has any such speculative opportunities it has the first right to exploit them. But if when the officers have in good faith disclosed everything, concealed nothing, and the real reason for non-action by the company has been either the want of funds or the want of courage to accept the risk, its officers and agents may then assume the risk and if successful the profits are rightfully their own private gain.

Where the stockholders of a mining company refused to contribute funds to work it is no fraud for its officers to take a new lease in their own names.—Hall v. Nash, 33 Colo. 500, 81 Pac. 249.

Where one corporation gets control of the stock of another and thus secures a bond and lease on its property, such contract will be set aside at the suit of the minority without proof of actual fraud.—Glengary M. Co. v. Boehmer, 28 Colo. 1, 62 Pac. 839.

A corporation cannot conspire that its own directors shall be unfaithful to it. One company cannot legally wreck another by securing control of its directory.—Penn. Sugar Co. v. Am. Sugar Co., 166 Fed. 254.

The fact that the members of two corporations are the same, and that one owns shares in the other and that they have mutual dealings with each other, does

not prove a merger nor prevent the allowance of a claim in favor of one against the other.—*In re Watertown Co.*, 169 Fed. 252.

The fact that the same person is president of both the contracting companies does not invalidate the instrument so signed nor raise a presumption of fraud.—*St. Joe Co. v. Bank*, 10 Colo. App. 339, 50 Pac. 1055.

Insurance companies are liable for any misstatements, errors or omissions chargeable to the fraud or neglect of their agents to deliver policies and collect premiums.—*State Ins. Co. v. Taylor*, 14 Colo. 499, 24 Pac. 333.

In *Stewart v. Wright*, 147 Fed. 321, the bank itself as well as its president and cashier was held responsible in damages where they had combined with other swindlers to carry on a systematic confidence game.

A contract to form a corporation, induced by representations of value made by a banker, a supposedly disinterested party, who in reality had a secret arrangement with the promoters, is voidable.—*Coulter v. Clark*, 160 Ind. 311.

New Stockholders Complaining of Past Acts.

Purchasers of stock cannot question the manner in which prior stockholders obtained their stock. This general holding was made in a case where stock had been bought with full knowledge of the mode of launching the company and the right of creditors was not involved.—*Eggleson v. Pantages*, 93 Wash. 221, 160 Pac. 425.

Previous corporate transactions are not open to question by those who become creditors later, but this rule does not apply where a misappropriation of funds was intended to defraud subsequent creditors and could have had no other object.—*Nix v. Miller*, 26 Colo. 203, 57 Pac. 1084.

Where there was a corporate defalcation followed by the resignation of the defendant director and the plaintiff becomes a creditor subsequent to the resignation the

resignation did not release the defendant director from the liability which became fixed at the time of the defalcation.—*Id.*

Torts—Trespass—Negligence.

Corporations are liable for their torts—that is, the wrongful acts or omissions of their officers and agents.—the same as natural persons.—*D. S. P. & P. R. Co. v. Conway*, 8 Colo. 1, 5 Pac. 142. And judgment for exemplary damages may go against them where it would stand against an individual.—*W. U. Tel. Co. v. Eyser*, 2 Colo. 141.

They are liable for the malice of their agents.—*Meek v. Smith*, 59 Colo. 461, 149 Pac. 627.

The manager of a milling company verbally authorized the company's lessee to go beyond the bounds of the lease on the ground of another company. The court held that a mine manager had no authority to authorize a trespass and that his company was not liable for the ore taken.—*Orphan Belle Co. v. Pinto Co.*, 35 Colo. 564, 85 Pac. 323.

But we consider this reasoning as strained and unsound. No officer or agent has authority to commit a trespass or do any other illegal act; but when he does do it and is in a position of apparent authority to do it, his company should not escape on the ground that as an abstract proposition he had no authority to do an illegal act.—*N. Y. Cent. R. R. v. U. S.*, 212 U. S. 481.

Contracts purporting to waive the negligence of a corporation are not valid.—*West. U. T. Co. v. Graham*, 1 Colo. 230; *Merchants D. Co. v. Cornforth*, 3 Colo. 280; *Overland Co. v. Carroll*, 7 Colo. 44, 1 Pac. 682; *Ormsby v. U. P. Ry.*, 4 Fed. 707.

Such contracts as to personal injuries are forbidden by section 15 of Article XV of the Constitution.

Libel.

Corporations are liable for libels, both civilly and criminally. *Vitagraph Co. v. Ford*, 241 Fed 681, was a suit wherein a corporation was plaintiff suing the defendant for libeling its moving picture show. The opinion favored the corporation and shows the extreme length to which casuistry can go to insinuate ultimate consequential damages.

Letters written by one to another officer of the same company concerning their employes though expressly charging an employe with crime do not amount to libel, being privileged communications. And they may show such letters to other employes within limits. But if such letters are maliciously exhibited the company is liable.—*Denver Warehouse Co. v. Holloway*, 34 Colo. 433, 83 Pac. 131.

Measure of Damages for Conversion of Stock.

The Measure of Damages for conversion of stock or for refusal to deliver stock is its actual value.

In action for deceit by purchasers on false representations, the measure of damages is the difference between the actual value and what it would have been worth if the representations had been true.—*Creighton v. Campbell*, 27 Colo. App. 121, 149 Pac. 448.

In *Continental Divide Co. v. Bliley*, 23 Colo. 160, 46 Pac. 633, the measure of damages for conversion of stock was held to be its value at the time of conversion with legal interest.

The choice of remedies to a party complaining of sale of stock induced by fraud is stated in *Jessey v. Butterfield*, 61 Colo. 256, 157 Pac. 1. If he sues for damages he should allege offer to return the stock. The complaint was held bad for combining action for damages with an inconsistent demand for rescission.

CHAPTER LIV.**RELATIONS TO CRIMINAL LAW.**

Corporations are criminally liable whenever it is clearly proved that they have hired or directed their agents to violate a penal statute, and they may be convicted of conspiracy, bribery and many other specific crimes, although the criminal prosecution of a company is not a frequent occurrence. But a corporation cannot be convicted under any statute where the only punishment provided is imprisonment.

The word person may include a corporation in a penal statute.—*Overland Mill v. Peo.*, 32 Colo. 263, 75 Pac. 924. where a penal statute is violated by a corporation the company itself and the agent by whom it commits the forbidden act may be both convicted.—*Id.*

The same point is ruled the same way in the Rebate Cases.—*N. Y. Cent. R. R. v. U. S.*, 212 U. S. 481.

And in the Overland Case the company was held criminally liable for employment of children hired by the general agent after proof that he had been instructed not to employ any children.

Penal Provisions for Their Protection.

Against arson, larceny and other like offenses, corporate property, real and personal, is protected the same as that of individuals.

The malicious injury of any corporate property is made a misdemeanor by the terms of section 1199 M. A. S.

Defense of Officers.

A corporation may rightfully pay out money for expert examinations and evidence in defense of a criminal prosecution of corporate officers for offenses associated with

their management of the corporate property.—*Lincoln M. Co. v. Williams*, 37 Colo. 193, 85 Pac. 844.

State v. Taylor is a case considering the question of how a corporation which is not capable of physical arrest can be brought within the jurisdiction of a criminal court.—37 S. Dak. 229, 157 N. W. 819.

CHAPTER LV.

JUDICIAL INTERFERENCE.

Stockholders must rely upon the good faith and business capacity of their directors for the success of their investment and submit to the discretion of the board as to the management of the company's affairs. They cannot appeal to the courts against what they or some of them, or even a majority of them, consider unwise action or unsafe policy. It is only when the board are guilty of a fraud in some form or have been breaking some law or are in collusion with themselves or some other corporation to wreck the company that the stockholders can successfully ask the interposition of any court.

When there is a case for such interference the proper court will generally be the Federal Court where it is a foreign corporation or the District Court where it is a domestic company. The case would almost invariably be one in equity where justices of the peace have no jurisdiction, and the amount in controversy would generally preclude the jurisdiction of county courts.

The courts will not interfere at the suit of a stockholder with the internal management of the corporation.—*Miller v. Murray*, 17 Colo. 409, 30 Pac. 46; *Holmes v. Jewett*, 55 Colo. 187, 134 Pac. 665.

The court on the complaint of stockholders, independently of any charge of wrongful conduct, will not inquire into the question of the necessity for levying an assessment.—*Weber v. Della Co.*, 14 Idaho 404, 94 Pac. 441.

It will require a case of gross mismanagement to justify the court's interference with the conduct of the affairs of a social club.—Rollins v. Denver Club, 43 Colo. 345, 96 Pac. 188.

Removal From Office.

It has been held that officers elective by the Board of Directors (the President), may be removed by the Board without notice or cause. The officer has no franchise in his office and it is a question of internal management with which the court will not interfere. In this instance the by-laws expressly gave to the directors the power of removal.—Spahn v. Bielefeld Co., 256 Pa. 543, 100 Atl. 987.

CHAPTER LVI.

BOOKS—RIGHT OF INSPECTION.

Sec. 1003 M. A. S. Books of Account—Stockholders May Examine.

It shall be the duty of the directors or trustees of every corporation, except railroad and telegraph companies, to cause to be kept at its principal office or place of business in this state correct books of account of all its business, and any stockholder in such corporation shall have the right, at all reasonable time, to inspect and examine all the books, accounts and papers of the corporation, and shall have the right as aforesaid to demand of any officer, clerk, cashier or agent of any such corporation having in his control or custody any such books, accounts or papers, as such stockholders may desire to examine or inspect; and upon such demand being made in writing, every such officer, clerk, cashier or agent shall be bound to produce such books, accounts and papers to such stockholder, and afford due opportunity to examine and inspect the same; and such stockholders shall have the right to take copies or make extracts therefrom, but shall not remove from the office of the corporation any such books, accounts and papers.

Penalty.

In case of refusal or neglect, by any such officer, clerk, cashier or agent, to exhibit the same, or to allow the same to be inspected and copies or extracts to be taken therefrom by any stockholder making such request, or who shall secrete, conceal or destroy any books, accounts or papers or who shall prevent, or endeavor to prevent, a full inspection of the same, shall be deemed guilty of a misdemeanor, and be liable to a penalty of two hundred dollars, or such less sum as a court or jury may find, to be recovered by action of debt, at suit of the person aggrieved, against the person offending, in the District Court of the county where the principal office of such corporation is located.—R. S. '08, § 869.

Sec. 1004 M. A. S. List of Stockholders.

It shall be the duty of the directors or trustees of every such corporation, except railroad and telegraph corporations, and industrial corporations having a paid-up capital of \$20,000,000 and maintaining a stock transfer agency in the city of New York, to cause a book to be kept by the secretary, agent or clerk thereof, containing the names of all persons, alphabetically arranged, who are, or shall within one year have been stockholders of such corporation, and showing their place of residence, the number of shares of stock held by them respectively, and the time when they respectively became the owners of such shares, and the time when they ceased to be such stockholders; and the amount of stock actually paid in, and what proportion has been paid in cash; which books shall during the usual business hours of the day, be open for inspection of the stockholders and creditors of the company, and their personal representatives, at the office or principal place of business of such company, in the county where its business operations shall be located; and any and every such stockholder, creditor or representative shall have a right to make extracts from such books, and no transfer of stock shall be valid for any purpose whatever except to render the person to whom it shall be transferred, liable for the debts of the company, according to the provisions of this act, unless it shall have been entered therein as required by this section, within sixty days from the date of such transfer, by an entry showing to and from whom transferred; or, in case of the pledge of any such stock, a memorandum be made upon the books of said company, showing to whom and for what amount the stock has been pledged. Such books shall be presumptive evidence of the facts therein stated

in any suit or proceedings against such corporation, or against any one or more stockholders. Every officer or agent of any such company authorized to keep such book or books who shall neglect to make any proper entry in such book, or shall refuse or neglect to exhibit the same, or allow the same to be inspected, and extracts taken therefrom shall be, as provided by this section, deemed guilty of a misdemeanor and punished by a fine not exceeding \$300, and the corporation shall forfeit and pay to the party injured a penalty of fifty dollars, for every such neglect or refusal, and all the damages resulting therefrom.—L. '19, p. 354, § 8, amending R. S. '08, § 870.

Sec. 1003a M. A. S. Certificate—State Whether Stock Ledger and Books Kept Out of State.

The certificate of incorporation of a company created for the purpose of carrying on part of (or) all of its business beyond the limits of this State shall also state whether or not an original or duplicate stock ledger shall be kept in Colorado, and whether or not the books required to be kept by Section 869 [§ 1003 M. A. S.] and 870 [§ 1004 M. A. S.] of the Revised Statutes of Colorado, 1908, may be kept out of the State of Colorado, and if out of the State of Colorado, the name of the agent or officer of said company in charge of the office out of this State in which such books may be kept, with the street or office address or such office or agent, and the permission hereby granted to keep such books and stock ledger out of the State of Colorado when so provided by the certificate of incorporation, shall not be deemed to repeal the damages and penalties provided in said Sections 869 [1003 M. A. S.] and 870 [§ 1004 M. A. S.], to be recovered in an action of debt in favor of any stockholder who shall make proper application at such place as may be specified in the certificate of incorporation as above provided; the name and address of one or more agents upon whom process may be served in this State, and the name and address of the person in charge of the office in which said books are kept out of this State shall be stated in each annual report of such corporation required to be filed by Section 911 [1051 M. A. S.] of the Revised Statutes of Colorado, 1908.—L. '21, p. 206, § 1.

Justices of the peace have jurisdiction to collect the penalty provided for in the above section.—Dwyer v. Bank, 30 Colo. 315, 70 Pac. 323.

Section 1003 M. A. S. requires the directors of all corporations except railroad and telegraph companies to keep "correct books of account of all its business."

Section 1004 M. A. S. requires a book to be kept by the secretary containing an alphabetical list of stockholders, showing the number of shares held and other items as expressed in its text, above printed.

These are the only books specifically required by law, but as a matter of course there will always be required—

A record or book for minutes of meeting.

Day book and ledger.

Stock certificate book.

All the books mentioned in these sections stockholders have the right to examine and inspect. The words "all the books of the corporation" would include the record of the minutes of all directors' and stockholders' meetings.

Sec. 1005 M. A. S. Right of Stockholders to Demand Report.

Whenever any person or persons owning fifteen (15) per cent of the capital stock of any corporation formed under this Act shall present a written request to the secretary, cashier or treasurer thereof, that they desire a statement of the affairs of such corporation, it shall be the duty of such secretary, cashier or treasurer to make a statement of the affairs of said company, under oath, embracing a particular account of all its assets and liabilities in detail, and to deliver such statement to the persons who presented the said written request to said secretary or treasurer, within twenty (20) days after such presentation; and shall also, at the same time, place and keep on file in the office of the company, for six months thereafter, a copy of such statement, which shall at all times, during business hours, be exhibited to any stockholder of said corporation demanding an examination thereof; such officer, however, shall not be required to make such statement, in the manner aforesaid, oftener than once in six months.—R. S. '08, § 877.

Demand for Report.

The undersigned, owning fifteen per cent. of the capital stock of *The Lucky Baldwin Mining Company*, a corporation organized and existing under the laws of the State of Colorado, present

this their written request to *John A. Emery*, secretary of said company, that they desire a statement of the affairs of said company under oath, according to the terms of section 1005 of Mills Annotated Statutes of Colorado. Dated at Dumont, Clear Creek county, Colorado, this 7th day of October, 1916.

J. BOYD DUFF, 10,000 Shares.

S. S. LARGE, 20,000 Shares.

Statement in Response to Demand.

STATE OF COLORADO, COUNTY OF CLEAR CREEK, SS.

Before me, the subscriber, a notary public in and for said county, personally appeared John A. Emery, who being first duly sworn, saith that he is the secretary of The Lucky Baldwin Mining Company, a corporation organized under the laws of said state and doing business in said county.

That in compliance with written demand served on affiant on the 7th day of October, 1916, by persons owning fifteen per cent. of the capital stock of said corporation, this affiant makes this statement of the affairs of said company and of its assets and liabilities:

Assets.

The property of said company consists of:

The Tiger, Bear and Wolverine Lodes, valued at.....	\$20,000.00
Working plant	10,000.00
Tools and supplies on hand.....	2,000.00
Ore on dump, est.	400.00
Ore shipped and not settled for.....	550.00
Office furniture	200.00
Cash on hand	880.20
	<hr/>
	\$34,030.20

Liabilities.

Pay roll for September, 1916.....	\$ 620.00
Hendrie & Bolthoff Co., machinery.....	800.00
Outstanding bills for supplies.....	220.60
Bonded debt secured on company's mining property...	15,000.00
Tax for 1915	160.00
Attorney's bill	250.00
Due bill to president for cash advanced.....	500.00
	<hr/>
	\$17,550.60

Balance\$16,479.60

And that the above statement and the several items thereof are correct and true.

(Jurat.)

JOHN A. EMERY.

The original of the above statement is delivered or mailed to one of the signers of the demand and a copy of the same is posted in the office or kept where accessible to all stockholders.

Only stockholders, creditors and their personal representatives have the right of inspection.—*Butterfly Terrible M. Co. v. Brind*, 41 Colo. 29, 91 Pac. 1101.

Section 1004 M. A. S. does not provide for a public record. Creditors of a stockholder are entitled to information as to the shares standing in the stockholders name only upon having instituted an action, and becoming entitled to a levy upon the debtor's holdings, under sections 4168, 4169 M. A. S.—*Carlton v. Camfield*, 64 Colo. 373, 171 Pac. 1140.

The right of a stockholder to inspect the stock ledger is an absolute right, and cannot be denied upon the ground of improper motive imputed to the stockholder.—*Wire v. Fisher*, 66 Colo. 545, 185 Pac. 469.

A petition for mandamus to compel the allowance of an inspection of the books of a corporation must show that the respondent is an officer of the corporation, or entrusted with the custody of its books.—*Clark v. Tindolph*, 67 Colo. 67, 185 Pac. 648.

Stockholders' right to examine the books of the corporation is not to be denied upon the suggestion that the stockholders' purpose is to obtain information which he may use to the injury of the corporation.—*Jameson v. Hanawalt*, 67 Colo. 153, 186 Pac. 743.

CHAPTER LVII.**AMENDMENT OF ARTICLES.**

The statutes on this subject were passed at different times, the later amendments paying little consideration to what was already on the statute book, but they can be reduced to practical consistency by the following analysis:

Sec. 1012 M. A. S. Amendment of Articles—No Change in Object.

That any corporation, organized under the laws of this state, may amend its articles of incorporation in any respect: *Provided*. No corporation shall by amendment or amendments so change its articles as to work a change in the object, or purpose for which such corporation was originally organized; *Provided, however*, that any ditch company may amend its articles so as to allow it to take stock in telephone companies for the purpose of affording facilities to such ditch companies in carrying on their business only. *Provided, further*, that no corporation shall by amendment or amendments provide that any of the capital stock of such corporation which shall have been issued full paid and non-assessable shall be thereafter assessable, unless by a unanimous vote of all of the holders of all of the stock which shall be outstanding at the time of such amendment.—L. '21, p. 208, amending R. S. '08, § 878.

We assume the meaning of the above printed proviso to be that a total change of corporate purpose is prohibited, but we do not assume that the objects could not be enlarged. For instance, a mining company could enlarge its objects so as to include milling or a ditch company could alter its articles to carry water to other points or from other streams than those mentioned in its original articles.

Sec. 1013 M. A. S. Amendments—Election—Meeting Notice.

Any proposed amendment or amendments may be voted upon by the stockholders, or, in the case of a corporation other than for pecuniary profit, and not having a capital stock, by the mem-

bers, at their regular annual meeting; *provided*, that the published notice as provided for in Section 865, of such annual meeting required by law and by the by-laws of the corporation shall have contained a notice that such proposed amendment or amendments, giving the purport of the same, would be presented and acted upon at such meeting, or any proposed amendment or amendments may be voted upon at a special meeting of the stockholders or of the members, in case of a corporation other than for pecuniary profit, and not having capital stock, called by order of the board of directors or trustees of the corporation; *provided*, that such special meeting shall be called and notice thereof be given as required by law and by the by-laws of the corporation, and by delivering personally or depositing in the postoffice, at least thirty days before the time fixed for such meeting, a notice properly addressed to each stockholder, or, in case of a corporation not for pecuniary profit, and not having capital stock, to each member, signed by the president or other head officer, or the secretary, stating the time and object of such meeting, and shall be held at the place appointed by the said board and designated in such notice.—L. '19, p. 355, § 9, amending R. S. '08, § 879.

Sec. 1014 M. A. S. Meeting to Amend—How Called—Request.

Whenever the holder or holders of one-third in amount of the stock subscribed, issued or credited to the holders thereof, or outstanding as shown by the stock books of any corporation created under the laws of the state, or whenever, in the case of corporations other than for pecuniary profit, and not having capital stock, ten members thereof shall, in writing, request the president or other head officer thereof to call a meeting of the stockholders thereof, or in case of corporations other than for pecuniary profit, and not having capital stock, the members thereof, for the purpose of considering proposed amendment or amendments to the articles of incorporation of such corporation, setting forth in such written request the substance of each proposed amendment or amendments, such president or other head officer shall, without unnecessary delay, call a meeting of the board of directors or trustees of such corporation, as the case may be, and present such request to such board, and thereupon it shall be the duty of such board of directors or trustees to call a special meeting of the stockholders, or, in case of corporations other than for pecuniary profit, and not having capital

stock, of the members of such corporations to be called for the purpose of considering said proposed amendment or amendments to its articles of incorporation for a time of not less than thirty nor more than sixty days thereafter, which said meeting shall be called by publication as provided for in Section 865 and delivering personally, or depositing in the postoffice at least thirty days before the time fixed for such meeting, a notice properly addressed to each stockholder, or, in case of a corporation not for pecuniary profit, and not having capital stock, to each member, signed by the president or other head officer, or the secretary, stating the time and object of such meeting, and shall be held at the place appointed by the said board, and designated in such notice.—L. '19, p. 356, § 10, amending R. S. '08, § 880.

Sec. 1015 M. A. S. Voting on Proposed Amendment.

At any such stockholders' meeting called and held as provided in section 1 or in section 2 of this Act the stockholders may vote in person or by proxy, each stockholder being entitled to one vote for each share of stock held by him and standing in his name upon the books of the company, and the voting shall be by ballot.

Not-for-Profit Companies.

Provided, That in case of corporations other than for pecuniary profit and not having capital stock, members must vote in person, each member being entitled to one vote.—R. S. '08, § 881.

[Sections 1 and 2 referred to are sections 1013 and 1014 M. A. S.]

Sec. 1016 M. A. S. Two-thirds Vote Required to Carry—Record of Certificates.

If at any such meeting the proposed amendment or amendments to the articles of incorporation of the corporation shall receive the vote of two-thirds of all the stock of said corporation then subscribed and in good faith outstanding, or, in the case of corporations other than pecuniary profit, and not having capital stock, the proposed amendment or amendments shall receive the vote of two-thirds of all the members present at that meeting, such amendment or amendments shall be deemed adopted, and a certificate setting forth the fact or facts, signed by the president or other head officer of said corporation, and verified by his affidavit, and attested by the secretary thereof, with the seal of

the corporation thereunto affixed, shall be filed for record with the Secretary of State, and a like certificate shall be filed in the office of the recorder of each county wherein the original articles of incorporation are filed, and thereafter said amendment or amendments shall be in full force and effect, to the same extent as if the same had been included in the original articles of incorporation.—R. S. '08, § 882.

The last paragraph of section 1021 M. A. S. covers some of the same ground as the above printed sections, but is of prior date and seems to be of no further effect.

Where the amendment fails to secure two-thirds of the stock entitled to vote, it is of no effect.—*Lilylands Co. v. Wood*, 56 Colo. 130, 136 Pac. 1026.

When and How Proposed.

From the above it will be seen that it may be proposed at the annual meeting, if the published notice calling such meeting contained the statement that the amendment would be proposed. Or at a special meeting of the stockholders called by the board. The holders of one-third of the stock may in writing request the president to call such special meeting, whereupon it is made the duty of the president to make such call for a board meeting and the duty of the board to call a special meeting of the stockholders for the purpose of considering the proposed amendment.

Notice of Meeting

A notice must be given as required by the by-laws of the corporation and be delivered personally or deposited in the postoffice addressed to each stockholder.

This notice must be not less than thirty days, and when made pursuant to call by one-third of the stock the Act says must not be more than sixty days after the date of the call.

Ten days notice by publication in a newspaper published in or nearest to the place in which the principal

office of the company shall be kept is necessary by the general terms of section 997 M. A. S., requiring such publication of all general or special meetings.

Sections 1017-1019 M. A. S., printed in the corporation chapter prescribing the procedure, have apparently now no force except in so far as they refer to consolidation of companies, being superseded by sections 1012-1016 M. A. S. above printed, which are later in their date of passage.

Action at the Meeting.

Each share is entitled to one vote, which may be cast by proxy, and the voting must be by ballot.

Two-thirds majority "of all the stock of said corporation then subscribed and in good faith outstanding" is required to carry the amendment.

The amendment being adopted a certificate setting forth the fact, signed by the president, verified by his affidavit and attested by the secretary, with the seal of the corporation thereto affixed, is filed for record with the Secretary of State, and a like certificate filed in the office of the recorder of each county where the original articles were filed.

In *Clough v. Rocky Mtn. Oil Co.*, 25 Colo. 520, 55 Pac. 809, there is a dictum that a company organized to manufacture and sell lime could not by amendment to its articles become a mining company. The mining was to be for gold and silver, not for the lime. But the main point decided in the case is that where all the forms of organizing a new company are complied with, with no expression of an intent to amend old articles, it is a new and separate company, although all the stock of the old was exchanged for the stock of the new company and the same management continued.

Railroad and Telegraph Companies.

Section 1020 M. A. S. referring to amendment of articles of railroad and telegraph companies, is below printed.

Although only certain specific amendments are referred to, this would not prevent such companies amending their articles in other respects under the general provisions of the section above printed.

**Sec. 1020 M. A. S. Change of Terminals—Branch Lines
—Certificate of Amendment—Where Filed.**

It shall be competent for any railroad or telegraph company, or corporation, upon a vote in person or by proxy of two-thirds in value of its stockholders, at any meeting thereof, to alter and amend its articles of association, so as to change its termini, or so as to extend the length of the line thereof from either of its termini to such further and other point as they may determine, or for the purpose of constructing branches from its main line, and upon such vote the said company may make articles amendatory of their original articles for the purpose of extending or changing the line of its road, or for constructing branches from its main line as aforesaid; and whenever any such company or corporation shall, by a vote of two-thirds in value of its stockholders, so determine to amend or alter their articles of association, and shall certify to such amendments or alterations, made as aforesaid, under the corporate seal of such company or corporation, attested by its president and secretary, and shall file such certificate in the office of the Secretary of State, and also in the office of the recorder of deeds in the county wherein the principal business of each company may be carried on, such amendment, amendments or alterations shall have the same force and effect as though said amendment or alteration had been included in and made a part of and embraced in its original articles of association.—R. S. '08, § 886.

Request to Call Meeting.

Georgetown, Colo., January 2, 1917.

To JAMES A. NOONE,

President of The Laurium Mining Company.

We, the undersigned, holders of one-third in amount of the stock subscribed, issued or credited to the holders thereof, or outstanding, as shown by the stock books of your said company, a corporation organized under the laws of the State of Colorado, hereby request you, as such president, to call a meeting of the board of directors thereof for the purpose of considering amendments to the articles of incorporation, to-wit:

1. To increase the capital stock of the company from \$300,000 to \$500,000.

2. To change the name of the company so as to read "The Laurium Mining and Smelting Company."

3. To increase the number of directors from three, as at present, to five.

4. By adding to the articles declaring the objects of the company a clause authorizing the company to engage in the business of smelting, to-wit: To smelt ores, of gold, silver and all other associated metals, and for such purpose to purchase or erect a smelting plant in said county of Clear Creek and to operate said plant upon ores mined by or purchased by said company and to dispose of the products of such smelting.

THOMAS L. WOOD, (75,000 Shares.)

J. WILLARD GIBBS. (50,000 Shares.)

The call for such meeting of directors is to be made as the by-laws prescribe, and it need not necessarily mention that it is to be held for this special purpose.

The board meeting being called, the statute is mandatory that it call a special stockholders' meeting, which may be in the form of a resolution.

Resolution to Call Special Meeting of Stockholders.

Resolved. That a special meeting of the stockholders of this company be called for Tuesday, the 12th day of February, 1917, at 10 o'clock a. m., at the office of this company, to pass upon proposed amendments to the original articles of incorporation of said company, to-wit: (Repeat the proposed amendment as in the form last above.)

This resolution is in compliance with the written request of the holders of one-third of the stock of said company, to be filed and entered on the minutes of this meeting.

The secretary is directed to give personal, written or printed notice of the time, place and object of such meeting to each stockholder in person or by mail, at least 30 days before the date of such meeting, and to publish the same ten days in the Georgetown Courier, a newspaper published in the same place where the principal office of this company is held.

The minutes will note that the motion to adopt the above resolution was duly made, seconded and carried.

Notice to Stockholders.

Notice is hereby given that there will be a special meeting of the stockholders of The Laurium Mining Company held at its office, No. 6 Alpine Street, Georgetown, Colorado, on Tuesday, the 12th day of February, 1917, at 10 o'clock a. m., to consider amendments proposed to the original articles of said company, to-wit: (As in the form on page 322.) Which amendments will be presented to be acted upon at such meeting.

This notice is given by order of the board by resolution adopted at a special meeting held January 5, 1917.

DEWEY C. BAILEY, Secretary.

Georgetown, January 5, 1917.

The meeting being held and assuming that one or more amendments carry, they will show in substantially the same form as in the adoption of the resolution at the directors' meeting, adding that the amendment was adopted unanimously (or) by a two-thirds vote of all the stock of the company then subscribed and in good faith outstanding, whereupon it is required that the proceeding be made matter of public record by certificate and affidavit, as per the following form:

Certificate of Amendments to Articles of Incorporation.

STATE OF COLORADO, COUNTY OF CLEAR CREEK, SS.

I, James A. Noone, president of the Laurium Mining Company, a corporation organized under the laws of the State of Colorado, by Original Articles of Incorporation, dated May 10, 1900, and duly filed in the office of the Secretary of said State, and in the office of the clerk and recorder of said county, do hereby certify that at a meeting of the board of directors of said company, held at its office, on the 5th day of January, 1917, the following resolution was adopted. (Here copy resolution from form on page 323.)

That pursuant to said resolution due notice was given by delivering personally or depositing in the postoffice, at least thirty days before the time fixed for such meeting, a notice properly stamped and addressed to each stockholder, stating the time, place and object of such meeting, and by publication for at least ten days before such date in the Georgetown Courier, a newspaper published in the town where the principal office of said company is kept.

And that at such meeting the said proposed amendment was adopted by a two-thirds vote of all the stock of said corporation then subscribed and in good faith outstanding.

In Witness Whereof, I, the said James A. Noone, president of said corporation, have hereunto set my hand and caused the seal of said corporation to be affixed to this certificate in duplicate this 12th day of February, A. D. 1917, to the intent that the same be filed for record as required by the terms of the statute in such case made and provided.

JAMES A. NOONE, (CORPORATE SEAL.)
President.

Attest:

DEWEY C. BAILEY, Secretary.

STATE OF COLORADO, COUNTY OF CLEAR CREEK, SS.

Before me, the subscriber, a notary public in and for said county, personally appeared James A. Noone, president of the within named, The Laurium Mining Company, personally known to me to be such officer, who, being first duly sworn, saith that he has read the foregoing certificate in duplicate and that the matters therein stated are true of his own knowledge.

JAMES A. NOONE,

Sworn and subscribed before me this 12th day of February, A. D. 1917.

My commission expires.....

(N. P. SEAL.)

JOHN TOMAY,
Notary Public.

One of these duplicates is recorded in the office of the Secretary of State and the other is filed in the recorder's office of the proper county. If the company does business in more than one county this paper will be executed in triplicate, or as the case may be, so as to file one in each county.

These filings complete the amendment.

Section 1023 M. A. S. provides that the change of name or other amendment shall not abate any suit pending in the original name, nor affect the rights of persons in any particular.

Amendment Increasing Stock.

Section 1042 M. A. S. is a punitive statute, making stockholders personally liable and calling for quo warranto

proceedings where the amendment is one for increase of stock and the fees imposed in such case are not paid. The section amounts to nothing where the proceedings are regular, because the papers would not be accepted until the fees were paid, but it would be operative where the increase was made without complying with the above provisions for State record. Section 1045 M. A. S. is a similar statute, referring to foreign corporations increasing their stock.

Amendment of Not-for-Profit Articles.

The above printed sections apply to amendment of not-for-profit associations, substituting the word members for stockholders. Instead of one-third of the stock ten members request the governing board to call the special meeting, and the amendment is carried if it receive the vote of two-thirds of the members present. The only other distinction is that no proxies are allowed at the meeting to amend.—Sec. 1015 M. A. S.

In the case of not-for-profit joint stock companies the above forms for business corporations apply, without any change whatever.

Cost on Amendment.

There is a charge of \$5 to the Secretary of State for each amendment on filing the amended articles, or \$25 where the amendment changes the corporate name.

Sec. 1041 M. A. S. Foreign corporations pay the same fees.

Sec. 1062 M. A. S. These fees are not chargeable to corporations not for profit or organized for religious educational or benevolent purposes.

All stockholders being present and assenting an association may amend its constitution at a time other than that fixed by its constitution.—Byers v. Hussey, 4 Colo. 522.

CHAPTER LVIII.**CHANGE OF NAME.****Sec. 1017 M. A. S. Change of Name.**

That whenever the board of directors, managers or trustees of any corporation existing by virtue of any general law of the Territory of Colorado, or the laws of this state, or any corporation hereafter organized by virtue of any law of this state, may desire to change the name, to change the place of business, to increase or decrease the authorized capital stock or any class thereof, to classify any of its stock, theretofore or then authorized, into two or more classes, with such designations, preferences, redemption or conversion features, and voting powers, or restrictions or qualifications thereof, as may be desired, to change the number of (or) par value of the shares of its capital stock, or of any class thereof, to change its stock, or any part or class thereof, from stock having par value to stock without par value, and to provide the terms upon which such exchange shall be effected in the case of stock already issued, to increase or decrease the number of directors, managers or trustees, or to consolidate said corporation with any other corporation or corporations now existing, or which may hereafter be organized, they may call a special meeting of the stockholders of such corporation for the purpose of submitting to a vote of the stockholders, entitled by the terms of the articles to vote thereon, the question of such change of name, change of place of business, increase or decrease of number of directors, managers or trustees, increase or decrease of capital stock, classification of stock, change in number or par value of shares, change from stock with par value to stock without par value, or consolidation with some other corporation, as the case may be; Provided, That in changing the name of any corporation, under the provisions hereof, no name shall be assumed or adopted by any corporation similar to, or liable to be mistaken for, the name of any other corporation, organized under the laws of this state, or of the laws of the Territory of Colorado; And, provided further, that the decrease of capital stock issued may be effected by retiring or reducing any class of the stock, or by drawing the necessary number of shares of any class by lot for retirement, or by the surrender by every shareholder of his shares, and the issue to him, in lieu thereof, of a decreased number of shares, or by re-

tiring shares owned by the corporation, or by reducing the par value of shares, or by redemption of shares of preferred stock at the price and upon the terms and in the manner fixed for the redemption thereof pursuant to the provisions of the articles or any amendment creating such preferred stock; but in no case shall the capital stock be diminished to the prejudice of the creditors of such corporation, or the number of directors, managers or trustees be reduced to less than three (except in the cases of incorporation organized for the purpose of construction of a railroad, to not less than five); And, provided further, that the provisions of this act, in reference ot (to) the consolidation of corporations, shall only apply to corporations of the same kind, engaged in the same general business.—L. '21, p. 201, § 5, amending R. S. '08, § 883.

Sec. 1018 Calling Meeting.

Such special meeting shall be called by publication as provided by law and delivering personally, or depositing in the post-office, at least thirty days before the time fixed for such meeting, a notice properly addressed to each stockholder, signed by the president or secretary, stating the time and object of such meeting.—L. '19, p. 357, § 11, amending R. S. '08, § 884.

Sec. 1019 M. A. S. Voting for Change of Name.

At any such meeting, stockholders entitled to vote thereat, may vote in person or by proxy, each stockholder being entitled to one vote for each share of voting stock held by him; and votes representing two-thirds of all the voting stock of the corporation shall be necessary for the adoption of the proposed change of name or place of business, number of directors or trustees, amount or par value or number of shares or classification of capital stock, change from par value stock to no par value stock, or consolidation with some other company or companies; Provided, that if any such proposed amendment would alter or change the preferences given to any one or more classes of preferred stock, or would increase or decrease the amount of authorized stock of such class or classes of preferred stock, or would increase or decrease the par value thereof, then the holders of the stock of each class of preferred stock so affected by the amendment shall be entitled to vote as a class upon such amendment, whether by the terms of the articles such class be entitled to vote or not; and the affirmative vote of a majority in interest of each such class of preferred stock so affected by

the amendment shall be necessary to the adoption thereof, as well as the affirmative vote of two-thirds of all classes of stock entitled to vote thereon; but the articles may contain provisions requiring the affirmative vote of a larger proportion of such preferred stock for the adoption of such amendment.—L. '21, p. 203, § 6, amending R. S. '08, § 885.

CHAPTER LIX.

CONSOLIDATION.

Sec. 1021 M. A. S. Any Two or More Companies May Unite.

Any corporation, existing for any of the purposes enumerated in this Act, may consolidate by uniting the properties and concerns of two or more corporations in one organization, having all the rights and privileges of this Act, and amendable to all its liabilities, by complying with all the requirements herein provided, to-wit:

Require Three-fourths Vote—New Directory.

Each corporation desiring to consolidate, each with the other, may, by its trustees or directors, or by the stockholders representing a majority of the stock, call a meeting of the stockholders, as provided in section 95 of this Act, and vote upon the proposition of consolidation that shall be presented in writing, at such meeting, when, if by vote of at least three-fourths of the stock of each company severally, the proposition shall be approved, the trustees or directors shall thereupon elect their proportion of the directors, less one, that are to manage the affairs of the consolidated company, and upon the joint meeting of the directors so elected, the said directors shall elect one of the stockholders to be a director and act with them, and they jointly shall constitute a board of directors, who shall organize by electing their officers in accordance with law.

Consolidated Articles.

They shall prepare a certificate of incorporation setting forth the facts of consolidation, together with all other matters required in original certificates of incorporation, naming therein

the directors elected as herein provided, who shall serve for one year, and until their successors are elected; and the said certificate of incorporation shall be signed and acknowledged by at least three of the stockholders of each of the consolidating companies.

Record of Same.

The certificate so signed and acknowledged shall be filed for record in the office of the Secretary of State, and in each of the offices of the county recorders where the certificate of either of the companies so consolidated are on file.

Conveyance to Consolidated Company.

The trustees or directors of the consolidating companies shall each by proper conveyance, convey to the consolidated company the property and effects of such companies.

Transfer Papers—Issue New Stock.

And shall deposit with the directors of the consolidated company all the transfer books, seals, books and papers of each of the companies so uniting. The directors of the consolidated corporation shall call in all the stock of each of the companies forming a part of the consolidation, cancel the same, and issue in lieu thereof the stock of the new organization in proportion of value of the old to the new, as provided in the plan of consolidation.

Call in All Stock.

Provided, No stock shall be issued in lieu of old stock except upon presentation of the old stock or due proof of the loss or destruction of the old certificates of stock, and then only to the parties entitled thereto.

Liability for Debts.

When the companies have consolidated as herein provided, the stock of the companies so consolidated shall thereafter represent only its interest in the new organization, whether surrendered and exchanged or not, and shall be subject to all the liabilities of assessment and forfeiture that may pertain to the stock of the consolidated company, and the consolidated company shall be responsible for and shall assume and pay all the just liabilities of each of the companies so consolidated.

Paragraph Concerning Amendments Wholly Irrelevant to Consolidation.

And any corporation desiring to change its name, place of business, number of directors or trustees, or amount of capital stock, shall submit the question at an annual meeting, or a special meeting called for that purpose, in accordance with the provisions of section 95 of this Act. If at any such meeting, three-fourths of all the stock of such corporation shall vote in favor of the proposed change or changes, a certificate setting forth the fact, or facts, verified by the affidavit of the president of said corporation, and having the seal of the corporation affixed, shall be filed for record with the Secretary of State and the recorder of the county where the principal business office of said corporation is located.—R. S. '08, § 887.

[Section 95 referred to is section 1113 M. A. S.]

Any two or more domestic corporations "engaged in the same general business and carrying on their business in the vicinity" may consolidate by compliance with the formula of consolidation as prescribed in the above printed section.

Each corporation calls a meeting of stockholders to vote upon the proposition of consolidation to be presented in writing at such meeting. Notice in person or by mail and by publication must be given as prescribed in section 997 M. A. S.

The call for such meeting may be either by resolution of the board or by stockholders representing a majority of the stock of each company.

Each board of directors then elects its understood proportion of directors in the new company, so arranging it that such directors will constitute a full board less one, and such directors, meeting together, fill the vacancy by the election of a director from the stockholders of one of the companies, whereupon the new board is complete and proceeds to elect officers for the consolidated company.

The members of the new board or any three stockholders from each company then proceed to act as incorporators for the new company, and make and acknowledge

the necessary duplicate sets of articles according to the form below.

The last paragraph of the above section 1021 M. A. S. has no reference whatever to consolidation—refers only to amendment of articles, and even on that subject is superseded by sections 1012-1020 M. A. S.

Articles of the Consolidated Company.

WHEREAS, On, to-wit, the 2nd day of January, 1917, the stockholders of The Boulder Oil Company, at a special meeting duly called after notice by mail to each stockholder of said company and publication in a newspaper published in the county of Boulder, in the State of Colorado, in strict compliance with the terms of section 865 of the Revised Statutes of Colorado, to consider the proposed consolidation with The Boulder Natural Gas Company, submitted in writing at said meeting, accepted such proposition for consolidation by the affirmative vote of more than three-fourths of the stock of said The Boulder Oil Company; and,

WHEREAS, On the same date the stockholders of The Boulder Natural Gas Company at a like special meeting duly called by like notice and publication, to consider said proposed consolidation, submitted in writing at said meeting, accepted such proposition for consolidation by like affirmative vote of three-fourths of the stock of the said The Boulder Natural Gas Company; and,

WHEREAS, The terms of consolidation agreed on at said several meetings were that each company should name three directors out of the seven directors constituting the new board and that stock should issue to the lawful holders of each company in exchange for the old stock, share for share; now, therefore,

(This paragraph of the preamble will, of course, vary according to the facts.)

KNOW ALL MEN BY THESE PRESENTS, That the undersigned, Warren Bleecker, James H. Baker and Geo. W. Teal, stockholders of said The Boulder Oil Company, and John A. Coulter, D. C. Fonda and Ralph W. Leach, stockholders of said The Boulder Natural Gas Company, in consummation of the said proposed consolidation and to witness the same and in compliance with the terms of the statute in such case made and provided, do make, sign and acknowledge these duplicate certificates in writing, which when filed shall constitute the articles of incorporation of the within named company, under the general incorporation Acts of the State of Colorado:

ARTICLE 1. The name of the said company shall be The Boulder Oil and Gas Company.

ARTICLE 2. The objects for which said company is created are to sink and operate wells in said county for the production of oil and natural gas upon its own ground or upon ground leased from other persons or companies, and to purchase and dispose of natural gas and oil from wells not owned or leased by said company.

ARTICLE 3. The term of existence of said company shall be twenty years.

Articles 4-9, including attestation clause, seals and acknowledgment, as per form on page 39.

Before the said articles are filed, one with the Secretary of State and one in the office of the recorder the joint meeting is supposed to have been held and the odd director selected, and his name will be one of the seven filled into article 5. This filing completes the consolidation, whereupon all property of the consolidated companies should be conveyed to the new company. The above section 1021 M. A. S. says the trustees or directors of the consolidating companies shall each by proper conveyance convey to the consolidated company the property and effects of such companies.

It seems irregular for directors to convey what does not belong to them, although such is the literal wording of the Act. The deeds should be from each of the old companies by its corporate name to a trustee, who immediately upon completion of the consolidation can convey to the new company. The old companies cannot convey direct to the new, because, as it comes into being, they cease to exist. Then to avoid all technical questions arising from the wording of the statute a quit-claim deed should be executed by each set of the old directors to the consolidated company of the same date as the date of the record of the new incorporation papers.

Sec. 1022 M. A. S. Publication of Notice of Consolidation.

Such corporation shall, upon the filing of said certificates, cause to be published in some newspaper, in or nearest the county in which their principal office is located, a notice of such changes of organization, for three successive weeks.—G. S., Sec. 350; G. L., Sec. 316.

Notice of Consolidation.

Public notice is hereby given in compliance with the terms of section 1022 of Mills Annotated Statutes of Colorado, that on, to-wit, this 2nd day of January, 1922 the two corporations organized under the laws of the State of Colorado, heretofore known as The Boulder Oil Company and the Boulder Natural Gas Company, were consolidated under the name of *The Boulder Oil and Gas Company*, and new articles, by that name, on that date, were filed in the office of the Secretary of State of Colorado and in the office of the clerk and recorder of Boulder county. Dated at Boulder, this 2d day of January, 1922.

THE BOULDER OIL COMPANY,

By *Warren Bleecker*, President.

THE BOULDER NATURAL GAS COMPANY,

By *John A. Coulter*, President.

Consolidation of Railroad and Telegraph Companies.

A special Act passed in 1883 [§§ 6068-6073 M. A. S.] applies to railroads which is only referred to, as the details of such Act are not within the intended compass of this book. Section 1024 M. A. S. is an isolated paragraph referring to railroad and telegraph companies and prohibiting the consolidation of parallel or competing lines.

The Constitution, Art. XV, Sec. 14, refers to the consolidation of domestic with foreign corporations—providing that such consolidation “by sale or otherwise” shall not be considered as a foreign corporation. And section 13 of the same article, disallows a telegraph company to consolidate with or hold a controlling interest in any competing line.

Mining Companies.

Section 1117 M. A. S. is a special reference to mining companies, entirely superfluous, as they can consolidate under the general provisions on the subject.

Suits Against the Consolidated Company.

In a suit against a company which was a consolidation of two ditch companies for an injury done by one of them before the consolidation, though the consolidated company is liable, the plaintiff must prove which of the two companies was the original wrongdoer.—Colo. Cons. W. Co. v. Morris, 1 Colo. App. 401, 29 Pac. 302.

Section 1023 M. A. S., which provides that no suit against either company shall abate by reason of the consolidation, is construed and the status of the now defunct old companies stated in Solmonovich v. Denver T. Co., 39 Colo. 282, 89 Pac. 57.

CHAPTER LX.

EXTENSION OF BUSINESS INTO NEW COUNTIES.

When any corporation organized to operate in one or more counties desires to extend its business into another county it is not required to execute any paper whatever, but merely to file a copy of its original articles, certified by the Secretary of State, in the office of the recorder of the new county, in compliance with the terms of the following section:

Sec. 979 M. A. S. File Copy of Articles in New County.

That all corporations formed under the provisions of an Act of the General Assembly of this State, entitled, "An Act to Provide for the Formation of Corporations," approved March 14, 1877, that may have heretofore extended, or may hereafter extend their business into counties other than those contemplated or specified in their original certificates of incorporation, may

procure from the Secretary of State a certified copy, or copies, of the certificate filed in his office, and file such certified copy in the office of the recorder of deeds in each county or counties in which such business has been or may be extended, and in any other county in which the business of such corporation has been carried on, and when so filed, such certified copy shall have the same force and effect as an original certificate filed at the time of the incorporation of such companies would have.—R. S. '08, § 860.

The Act of 1877 cited in the above section means practically the corporation chapter of Mills Annotated Statutes.

CHAPTER LXI.

SERVICE OF PROCESS.

Sec. 987 M. A. S. Process, How Served on Corporation.

In suits against any corporation, summons shall be served in that county where the principal office of the corporation is kept or its principal business is carried on, by delivering a copy to the president thereof, if he may be found in said county, but if he is absent therefrom, then the summons shall be served in like manner in such county, on either the vice-president, secretary, treasurer, cashier, general agent, general superintendent, or stockholder or agent as provided in Section 847 hereof of said corporation, within such time and under such rules as are provided by law for the service of such process in suits against real persons, and if no such person can be found in the county where the principal office of the corporation is kept, or in the county where its principal business is carried on, to serve such process upon a summons may issue from either one of such counties, directed to the sheriff of any county in this state where any such person may be found, and served with process. If such corporation keeps no principal office in any county, and there is no county in which the principal business of such corporation is carried on, then suit may be brought against it in any county where the above-mentioned officers, or any, or either of them may be found; *provided*, that the plaintiff may, in all cases, bring his action in the county where the cause of action occurred.—L. '19, p. 351, § 5, amending R. S. '08, § 856.

Code section 40 provides that in suits against a municipal corporation process shall be served by delivering a copy of the summons to the mayor or clerk.

Against a county by copy to the county clerk.

Against a school district by copy to the clerk or one of its directors.

On Private Corporation.

"If the action be against a private corporation, by delivering a copy of the summons to the president or other chief officer of such corporation, or to the secretary, treasurer, cashier or other general agent thereof; but if no such officer of the corporation can be found in the county in which the action is brought, then service may be made by delivering a copy of the summons to any stockholder of such corporation, who may be found in such county.

On Railroad Company.

"If the action be against a railroad company, whether organized under the laws of this State, or of any other state or territory, and whether the charter prescribes the manner or place of the service of process on such company, the summons may be served by delivering a copy thereof to the president or vice-president, or secretary or treasurer, or cashier of such company; *Provided*, That if no such officer be found in the county in which the action is brought, service of summons may be made by delivering a copy thereof to any regular or acting ticket agent of such company, having his office in the county in which the action is brought.

On Foreign Corporation.

"If the action be against a foreign corporation, or joint stock company or association, organized under the laws of another state or territory, and doing business within this State, the summons shall be served by delivering a copy to any agent of such corporation, company or association found in the county in which the action is brought. If no such agent be found in such county, then by delivering a copy of the summons to any stockholder, who may be found in such county."

Section 987 M. A. S., a prior Act on the same subject is wholly inconsistent with the Code section, and the decisions are to the effect that the old statute is repealed by implication.—*Little Bobtail M. Co. v. Lightbourne*, 10 Colo. 429, 17 Pac. 785; *Tabor v. Goss Co.*, 11 Colo. 419, 18 Pac. 537.

Where the sheriff or attorney cannot after due diligence find any officer, agent or stockholder of any domestic corporation provision is made for an order for service by publication.—Code, Secs. 46, 47.

All the above refer to suits in courts of record, but before a justice of the peace service is specially provided for by Sec. 988 M. A. S.

The process agent is not the only agent upon whom service may be made, and the president and vice-president being agents by virtue of their office the company may be brought in by service on such officer.—*Venner v. Denver U. W. Co.*, 40 Colo. 212, 90 Pac. 627; overruling 15 Colo. App. 495 on this point.

Service upon the vice-president of a domestic corporation, under section 38 of the Code of 1887, which on this point is substantially the same as the present section 40, was held good without statement that the president could not be found in the county.—*Comet M. Co. v. Frost*, 15 Colo. 310, 25 Pac. 506.

In *Colo. Iron Works v. Sierra Grande M. Co.*, 15 Colo. 499, 25 Pac. 325, the summons had been served on a stockholder. An entry of transfer of his stock had been made on the books to a trustee apparently as preliminary to a sale. The facts are close, but the service was held good.

Where a corporate agent has a claim against his company, which he assigns, he cannot be legally served as an agent of his company in a suit on the assigned claim.—*White House Co. v. Powell*, 30 Colo. 397, 70 Pac. 679.

The receiver of a railroad company, a foreign corporation appointed by a foreign court and a non-resident, but operating by agents a part of the road within this State,

was held liable to garnishment in this State, and the service on one of his agents good service.—*Phelan v. Ganebin*, 5 Colo. 14.

Service may be had on a process agent even after the corporation has gone out of business and sold its property.—*Hill v. Empire State Co.*, 156 Fed. 797.

At common law there was no method by which a State Court could get service upon a foreign corporation so as to procure against it a personal judgment. Such service is regulated by statute and the terms of the statute must be looked to, to decide whether process has been duly served.—*Swarts v. Christie Co.*, 166 Fed. 338.

Where a foreign corporation designated its process agent in the Secretary of State's office but not with the county recorder, it cannot take advantage of its own omission and is bound by the service on such agent.—*Austin v. King*, 25 Colo. App. 364, 138 Pac. 57.

A corporation organized under the laws of Colorado may serve process by publication.—*Jotter v. Marvin Inv. Co.*, 67 Colo. 555, 189 Pac. 22.

Preemption of Corporate Name.

By Act of 1911 the right to use any specified corporate name may be preempted for sixty days by filing a caveat with the Secretary of State on payment of a filing fee of five dollars.

Preemption of Corporate Name.

KNOW ALL MEN BY THESE PRESENTS, That the undersigned, *Robert M. Rankin, Walter Fairbanks and Walter B. Lowry*, all of the City and County of Denver, State of Colorado, and citizens of said State, hereby certify that it is the desire and intention of said persons above named to adopt and use the name of *The Armageddon War Munitions Company* as the corporate name and style of a domestic corporation to be by said persons organized within sixty days from the date of filing this certificate in the office of the Secretary of State of Colorado and its articles made and filed in compliance with law within said period of

time. And they therefore request the Honorable Secretary of State of Colorado to set aside such corporate name for their use and benefit.

Done and certified under the terms of the Act approved May 27, 1911, found as Sections 976, 977 and 978 of Mills Annotated Statutes of Colorado, witness our hands and seals this 2d day of April, A. D. 1917.

ROBERT M. RANKIN, (SEAL.)

WALTER FAIRBANKS, (SEAL.)

WALTER B. LOWRY, (SEAL.)

Acknowledgment as on page 40. But we cannot say that an acknowledgment is strictly necessary.

Under the reading of the Act it seems that any corporation already organized but desiring to change its corporate style may preempt the desired new name by filing such certificate.

CHAPTER LXII.

ANNUAL REPORTS.

Long before State admission corporations were required to file a report early in the calendar year, stating the amount of their indebtedness and the amount of stock paid in, under penalty of personal liability upon the defaulting officers. But in 1901 and 1911 the Act was enlarged and became much more inquisitorial.

The statute, section 1051 M. A. S., requires such report of all companies, dividing them into classes and tabulating the items required of each. These classes are:

- A. All business corporations not specifically mentioned in subdivisions B-F.
- B. Companies mining or milling gold or silver.
- C. Railroads.
- D. Telegraph and telephone companies.
- E. Coal mining companies.
- F. Canal, ditch and power companies.

Sec. 1051 M. A. S. Annual Reports of Corporations— Contents.

Every corporation, joint stock company or association, incorporated by or under any general or special law of this state, or by any general or special law of any foreign state or kingdom, or of any state or territory of the United States, beyond the limits of this state, shall, within sixty days next after the first day of January in each year, commencing with the year 1912, make and file an annual report in the office of the Secretary of State, showing:

First—The names of its officers and their several places of residence, together with the street or business address of such officer.

Second—The names of its directors or trustees and their several places of residence, together with the street or business address of such director or trustee.

Third—The amount of its capital stock as fixed and determined by its articles of incorporation and amendments thereto; together with (if a foreign) corporation the portion of said capital stock represented by its corporate capital, property and assets located and employed in the State of Colorado. And if it appear by any annual report so filed that the corporate capital, property and assets located and employed in the State of Colorado shall exceed the amount mentioned in its sworn statement at the time of the original filing in the office of the Secretary of State, then said corporation shall pay to the Secretary of State and Secretary of State is authorized to collect thirty cents (\$0.30) on each and every one thousand dollars of such excess, and in default of said payment the certificate of authority issued to said corporation shall be revoked.

Fourth—The proportion of said capital stock actually paid in.

Fifth—Setting forth how the same was paid, whether in cash, by the purchase of property, or otherwise.

Sixth—The amount of the indebtedness of said corporation at the date of filing said report.

Seventh—Setting forth whether or not it is engaged in the active operation of its business within the State of Colorado.

Eighth—Such other information as will show with reasonable fullness and certainty the condition of its real and personal property, and the financial condition of said corporation, joint stock company or association at the date of filing such report.

And if such corporation be a mining corporation, engaged in mining or mining and milling the precious metals, in addition to the requirements above set forth, such mining corporation shall also set forth:

First—The amount of its properties within the State, and where the same are located.

Second—Whether or not the same are held under letters patent of the United States, and if so, what amount thereof.

Third—Whether or not the same are held by possessory right on the public domain, setting forth the amount thereof.

Fourth—Also stating in general terms the amount of work done thereon and improvements made thereon since the time of filing the last annual report.

And if such corporation be a railroad or other corporation engaged in the transportation of freight, passengers or other public service, in addition to the matters herein required to be set forth, said corporation shall also state:

First—The number of miles of track owned and operated by it within this state, and the estimated cash value thereof.

Second—The number of miles of track leased or in any other way controlled and operated by it within this state, and the estimated cash value thereof.

Third—The amount of rolling stock of all descriptions owned and operated by it within the limits of this state, and the estimated cash value thereof.

Fourth—The amount of rolling stock of all descriptions leased and operated by it within the limits of this state, and the estimated cash value thereof.

Fifth—The amount, together with the estimated cash value thereof, of all its real and personal property, outside of its trackage and rolling stock.

Sixth—Its franchises, from whom held, together with its estimated cash value thereof.

And if such corporation be telegraph or telephone company, in addition to the matters herein required to be set forth by such corporation it shall also set forth:

First—The number of miles of wire owned and operated by it within this state, and the estimated cash value thereof.

Second—The number of miles of wire leased and operated by it, together with the estimated cash value thereof.

Third—The number of offices operated by it within this state, together with the estimated cash value of the equipments of the same.

Fourth—The estimated cash value of its real and personal property, outside of its owned and leased lines, offices and equipment.

And if such corporation be engaged in the business of coal mining, in addition to the matters hereinbefore required to be

set forth, it shall state:

First—The number and location of the different mines owned and operated by it within this state.

Second—The number and location of the different mines leased and operated by it within this state.

Third—The number of men actually employed by it at the date of filing said report.

Fourth—The estimated cash value of the machinery, improvements and general equipments of the different mines owned, leased and operated by it.

Fifth—The amount of development and improvement done by it upon all of its said property since the filing of its previous annual report.

Sixth—The acreage of lands owned and leased, but which has not been developed.

And if such corporation be a canal, ditch, power or other corporation engaged in supplying water for irrigation, domestic, mining or power purposes, in addition to the matters hereinbefore required to be set forth in such annual report, such canal, ditch, power or other corporation shall set forth:

First—The number of miles of canal and ditch owned and operated by it.

Second—The number of miles of canal and ditch leased and operated by it.

Third—The number of miles of flume, pipe or other conduit, owned and operated by it, or leased and operated by it.

Fourth—The amount of its real and personal property, outside of its ditches, canals, flumes or pipe lines.

Fifth—The number of acres watered by it.

Which report in each case shall be signed by the president, and be verified by the oath of the president and secretary of said corporation under its corporate seal.

Every such corporation, joint stock company or association shall pay to the Secretary of State, for the state as a fee for examining and filing such reports as follows:

All ditch or canal companies having a capital stock of fifty thousand dollars or less, one dollar.

All corporations not for pecuniary profit, or corporations organized for religious, educational or benevolent purposes, one dollar.

All corporations with a capital stock of ten thousand dollars or less, one dollar.

All other corporations, joint stock companies or associations, five dollars.

And if any such corporation, joint stock company, or association shall fail, refuse or omit to file the annual report as aforesaid, and to pay the fees prescribed therefor, within the time above prescribed, all the officers and directors of said corporation shall be jointly and severally and individually liable for all debts of such corporation, joint stock company or association that shall be contracted during the year next preceding the time when such report should by this section have been made and filed, and until such report shall be made and filed.

And as further penalty for such failure, refusal or omission of the president and secretary of such corporation, a joint stock company or association to comply with the conditions of this law, they shall be subject to a fine of not to exceed fifty dollars to be recovered before any court of competent jurisdiction; and it is hereby made the duty of the Secretary of State immediately after the expiration of sixty (60) days from the first day of each January to report the fact to the district attorney having jurisdiction of the county in which the business of such corporation is located, and the district attorney shall, as soon thereafter as practicable, institute proceedings to recover the fine herein provided for, which shall go into the revenue fund of the county in which the cause shall accrue; in addition to which penalty on and after the going into effect of this act, no corporation, as above defined, which shall fail to comply with this act can maintain any suit or action, either legal or equitable, in any of the courts of this state upon any demand, whether arising out of contract or tort. *Provided*, that in case of absence refusal or inability to act of the president and secretary, of any company, corporation, association or joint stock company to file an annual report as above prescribed, then any director may execute and file such report within the thirty days next after the expiration of the sixty-day period provided for in this act. This provision is made for the express purpose of protecting the directors and cannot be employed as a remedy to relieve the secretary or president from the imposition of the penalties provided for in this section.—L. '19, p. 359, § 14 amending L. '11, p. 255, § 2, which amended R. S. '08, § 911.

This report is required of foreign as well as domestic corporations, but not from any class of not-for-profit company. It is true that in the paragraph fixing the fees such companies are mentioned and required to pay \$1, but in the first section of the Act [§ 1038 M. A. S.]

they are expressly excluded from its provisions, and such penal statutes being strictly construed no court would bring them in by implication because incidentally so mentioned, when by another clause they are in terms exempted.

Since the above paragraph was written it has been so held in terms by the Supreme Court that no annual report is required from a not-for-profit company, and that the directors of a mutual insurance company whose business was restricted to insuring the property of its own members were not liable for failure to file.—*Steck v. Prentice*, 43 Colo. 17, 95 Pac. 552.

The Court considers this annual report Act of 1911 (above printed) holding it to be penal in character and to be strictly construed, but allowing the assignee of a creditor to sue.—*Credit Men's Co. v. Vickery*, 62 Colo. 214, 161 Pac. 297.

Introductory remarks of this character as to strict construction are generally a prelude to an actual holding to just the contrary.

For many decisions on the penal paragraph of this section see page 293.

The paragraph numbered "Eighth," printed above under Class A business corporations, has been generally regarded as so indefinite as to be merely directory, but in *Moody v. Rhodes Ranch Egg Co.*, 61 Colo. 368, 157 P. 1167, the Supreme Court, without any citation of authorities, held that an annual report which failed to fill in that blank "was in law no report." This ruling was made under a recent appellate practice which compels decisions to be handed down after practically no argument and yet they become rules of property.

Besides the annual report referred to in this chapter and required of all except not-for-profit corporations, special reports are demanded of insurance companies and banks as noted under those heads.

Where the annual report omits certain items it was held a nullity, so that officers were liable for debts as

for failure to make any report. In exact statements in the report was held not to cure omissions therein.—*International State Bank v. McGlashan*, 204 Pac. 480.

Where the complaint of creditors fails to show whether no report was filed or whether the report filed did not with sufficient detail set out the particulars required by the statute, is insufficient in law.—*Schroeder v. Snarr*, 68 Colo. 418, 189 Pac. 931.

A false report in due form is sufficient to protect the directors from liability under the statute.—*Id.*

Directors responsible for the making of a false report are liable under M. A. S. § 1010 as though no report had been filed.—*Id.*

An annual report containing no statement of any indebtedness as owed by the corporation was held not a compliance with the statute.—*Perini v. Continental Oil Co.*, 68 Colo. 564, 190 Pac. 532.

The annual report should be filed within a reasonable time after its preparation, the time depending upon the circumstances of each case.—*Id.*

Former default by a corporation in filing an annual report is no bar against the creditor's action against the directors upon a later default.—*Id.*

CHAPTER LXIII.

DIVIDENDS.

A dividend is a payment pro rata out of the profits or net earnings of the company. Where the capital is broken into to make a dividend such action is in violation of law, except where it is final distribution on dissolution or cutting down of the stock issue.

Section 1009 M. A. S., stating the penalty for declaring fraudulent dividend, is printed on page 291.

A corporation cannot be compelled by the court to pay a dividend upon its stock without proof that it was legally declared.—*Calliope M. Co. v. Herzinger*, 21 Colo. 482, 42 Pac. 668.

In *Montgomery v. Whitehead*, 40 Colo. 320, 90 Pac. 509, judgment was recovered under the section cited against the stockholders when the company had distributed its assets while in debt to the plaintiff or his garnishee.

A division of profits is equivalent to declaring a dividend.—*Wilson's Estate, In re*, 85 Oregon 604, 167 Pac. 580.

A stockholder has no interest in the profits of a corporation until dividends have been declared.—*Southern Pac. Co. v. Lowe*, 238 Fed. 847.

A special Act of 1915, § 1063 M. A. S., provides for collection of dividends owing by foreign corporations to the representative of deceased stockholders residents of Colorado.

Not-for-profit companies are not allowed to make distribution nor declare a dividend until all their debts are paid.—Sec. 1129 M. A. S.

A utility corporation is entitled to a fair return upon the reasonable value of its property at the time it is being used for the public.—*Ohio & Colo. S. & R. Co. v. Utilities Commission*, 68 Colo. 137, 187 Pac. 1082.

CHAPTER LXIV.

RECEIVERS.

Courts have no jurisdiction to appoint a receiver except in a suit pending in which the receiver is desired.—*Jones v. Bank*, 10 Colo. 464, 17 Pac. 272.

Where by collusion a receiver was appointed and a debt to one of the directors was allowed the court ordered that the claim of such director should be deferred until the outside creditor was paid.—*Watrous v. Hilliard*, 38 Colo. 255, 88 Pac. 185.

A party applying for a receiver is personally liable for the shortage if the corporate funds fail to meet the expenses.—*German Nat. Bk. v. Best*, 32 Colo. 192, 75 Pac. 398.

A court has no power to appoint a receiver and authorize the issue of receiver's certificates for the cost of carrying on the business of a ditch company so as to exclude or become a co-ordinate lien with that of a prior mortgage.—*Belknap Bk. v. Lamar Co.*, 28 Colo. 326, 64 Pac. 212.

A court has no power to allow receiver's certificates to issue and cut out a recorded mortgage in a case where the defendant is only a private corporation, except where necessary to preserve the security. Expenses incurred in mining is no such instance.—*Int. Trust Co. v. United Coal Co.*, 27 Colo. 246, 60 Pac. 621; *Stanley v. Hendrie & B. Co.*, 27 Colo. 331, 61 Pac. 600.

The appointment of a receiver is not the proper remedy where the object of the suit is to prevent a private corporation from disbursing its property or to protect an unsecured debt; but if appointed the power to contract debts by receiver's certificates for running expenses so as to cut out a prior lien is confined strictly to railroads, or in addition possibly to such other corporations as may be considered public corporations.—*Int. Tr. Co. v. United Coal Co.*, 27 Colo. 247, 60 Pac. 621.

The appointment of a receiver does not operate to dissolve a corporation, and the receiver does not necessarily have to be substituted as a party to a suit already pending.—*Steinhauer v. Colmar*, 11 Colo. App. 495, 55 Pac. 291.

Where an officer of the company is appointed its receiver it does not terminate his official relations to the company.—*Venner v. Denver U. W. Co.*, 40 Colo. 213, 90 Pac. 623.

Where a foreign corporation goes into the hands of a receiver that does not oust the jurisdiction of Colorado Courts in actions against the company itself.—*Id.*

A Court of Equity has no power to dissolve a going business corporation, and to that end appoint a receiver unless it comes within the terms of a permissive statute to that effect. Nor has it power at the suit of a stockholder to appoint a receiver or dissolve the corporation for alleged fraud in its operations.

Section 1036 M. A. S. allowing a receivership in case of insolvent corporations “merely gives a remedy in the nature of a creditor’s bill.”—*Peo. v. District Court*, 33 Colo. 293, 80 Pac. 908.

The entire statute law of this State on the subject of receivers which is very limited is reviewed in this case.

The laws of this State recognize the appointment of a receiver for a corporation by the courts of its own state; and an injunction against the use of its corporate functions in this State will be respected.—*Am. Water Works v. Farmers L. & T. Co.*, 20 Colo. 203, 37 Pac. 269.

The State Courts have jurisdiction to appoint a receiver for a National Bank which has ceased to do business. The opinion in this case is instructive as to the duties of receiver to make full report and as to what fund or party is responsible for his charges.—*Grout v. Bank*, 48 Colo. 557, 111 Pac. 556.

CHAPTER LXV.

REVOCATION.

Legislative Control—Revocation of Charter.

Corporations are the creatures of the legislative de-

partment of government, and there is practically no limit to the power of the legislature to control them, save only that vested rights are protected as are those of all persons.

Sections 3, article 15, of the Constitution reserves the right to revoke any charter whenever in the opinion of the legislature "it may be injurious to the citizens of the State" where it can be done without injustice to the corporators, but no attempt has ever been made to exercise such power.

Sec. 1054 M. A. S. Legislature May Amend or Repeal Act.

The general assembly may, at any time, alter, amend, or repeal this Act, and shall at all times have power to prescribe such regulations and provisions as it may deem advisable, which regulations and provisions shall be binding on any and all corporations formed under the provisions of this Act; *And, provided, further,* That this Act shall not be held to revive or extend any private charter or law, heretofore granted or passed concerning any corporation.—R. S. '08, § 914.

The above section 1054 M. A. S. is from the corporation chapter of the General Laws of 1877, and is an attempt to express the substance of the conceded right of the legislature to control its corporate creations.

The reserve of the right to amend is only precautionary if not mere surplusage, and "regulations and provisions"—that is to say, subsequent legislation which would attempt to destroy vested rights—would be void.

Blue Sky Laws.

The Blue Sky Laws of Michigan and other states have been before the national Supreme Court in several recent cases and have been uniformly sustained. These laws are directed especially against Investment Companies, requiring license to dealers and placing them under the supervision of boards and commissioners. The court held them valid under the police power of the State and not under the protection of the Fourteenth Amendment and that the drastic power given the board to discriminate be-

tween corporations of good and evil reputation was not arbitrary. The courts below had held the statutes unconstitutional and one of the Supreme Court Justices dissented from the decisions, which shows that the acts encroach on doubtful ground. On the construction given, the Right of Statutory Control of corporations reaches extreme limits.—Hall v. Geiger-Jones Co.; Cadwell v. Sioux Falls Co.; Merriek v. Halsey, 242 U. S. 539-590.

CHAPTER LXVI.

TAXATION.

Sec. 9. Relinquishment of Power to Tax Corporations Forbidden.

The power to tax corporations and corporate property, real and personal, shall never be relinquished or suspended.—Const., Art. X.

Sec. 10. Corporations Subject to Tax.

All corporations in this State, or doing business therein, shall be subject to taxation for state, county, school, municipal and other purposes, on the real and personal property owned or used by them within the territorial limits of the authority levying the tax.—Const., Art. X.

All corporate property, real and personal, including franchises, is subject to assessment, with a few minor exemptions hereinafter noted.

A great number of the sections of the revenue chapter deal with special classes of companies and with details of assessment, a concise summary of the same being herein attempted.

Section 6244 M. A. S. is an attempt to make special franchises a separate item of taxation. It seems to us entirely sentimental and impractical as well as contradictory to section 6246 M. A. S., which says "the entire business * * * shall be valued as a unit."

Section 6471 M. A. S. is a more specific enactment on the same subject, requiring a special return of schedule of all "franchises, privileges and intangible rights." We apprehend that this section, if capable of enforcement at all, would be confined strictly to franchises of specific value. And if the value of the franchises operates to give value to the stock and the corporate property is appraised at the market value of the stock, we cannot see how a separate or additional valuation could be placed on the franchises.

Section 6245 M. A. S. is advisory to the assessor as to the basis upon which corporate valuation is to be arrived at, the total market value of the stock being the basis where it has a market value.

Section 6247 M. A. S. allows the assessor to apply to the court for a citation from the court upon his failure to get satisfactory answers from the taxpayer.

Sections 6248, 6371, 6473, 6474, and 6476 M. A. S. apply to corporations doing business in two or more counties.

Building and loan associations are required to return a special schedule.—Sec. 6254 M. A. S.

The assessment of mining claims is regulated by Secs. 6260-6270 M. A. S.

Scattered through the revenue chapter are many sections referring to the special returns required and mode of collection of tax against railroads, express, telegraph, telephone, fast freight and sleeping car companies.

Sections 6273-6276 M. A. S. cover the matter of the taxation of national bank stock.

The State has no right to levy a special tax on moving picture shows under the pretense of inspection. The Court, having laid down this theory, then proceeded to show by its decision that the theory was in fact no practical protection.—*State v. Ross*, 101 Kans. 377, 166 Pac. 505.

The property of a corporation organized to create a fund by the payment of monthly dues by its members, employees of a railroad, which fund is used to secure and maintain

a hospital for the benefit of its members; and is not used exclusively for charitable purposes, so as to exempt it from taxation.—*Commissioners v. D. & R. G. Ass'n.*, 70 Colo. 592, 203 Pac. 850.

The Flat Tax—Franchises.

In 1902 the Revenue Act imposed what it termed a license tax, but commonly known as the flat tax of two cents upon each \$1,000 of the stock of domestic and four cents upon the stock of foreign corporations. In *American Smelting Co. v. People*, 34 Colo. 240, 82 Pac. 531, the Supreme Court upheld as constitutional this tax on the stock of the smelting company, a foreign corporation. They held that the right to do business as a corporation was in itself a franchise, and that the State could impose an arbitrary tax upon it as such, and that it could make what distinctions it chose against foreign corporations. This decision was reversed by the Federal Supreme Court on the ground that the smelting company, having filed its articles and begun to do business in this State, while a statute existed requiring it to conform to all laws governing domestic corporations, the State could not afterwards impose a tax of such a character greater than it imposed upon domestic companies.—204 U. S. 103.

After this reversal the session of 1907 amended the flat tax sections so as to make the tax the same upon both foreign and domestic companies—two cents per \$1,000 of stock.—Sec. 6284 M. A. S.

The Act as amended was before the Court in *Colorado & S. Ry. v. Peo.*, where it was held to be no interference with interstate commerce and upheld generally as legitimate taxation, White J., dissenting.—61 Colo. 230, 156 Pac. 1095.

A franchise is a special privilege conferred by legislative grant. The mere right to do business as a corporation is technically a franchise, but it is obviously a privilege of merely sentimental value, while the right to use the

public streets for carriage of passengers is an instance of corporate franchise of presumably great value.

This flat tax law disregards this self-evident distinction, and imposes itself alike upon companies whose sole value is their franchise and upon companies which have only a nominal franchise of no value at all. It is only defensible upon the most refined and technical reasoning and is arbitrary taxation, both unequal and unjust.

In some cases the flat tax amounts to more than the amount of the tax on all the property owned by the corporation; that is, more than the tax upon the market value of the capital stock. It is not only double taxation, but arbitrary taxation based on no theory of equal justice to all, and its only excuse for existence is the power of the legislature to pass it.

By two acts of the Special Session of 1917 [§§ 6284-6284b, 6285-6285c M. A. S.] the legislature made \$10 the tax on all domestic corporations of \$100,000 capital or less and abruptly raised the tax on each additional \$1,000 of capital from 2 cents to 10 cents.

By the second Act the same tax is payable by foreign corporations and within 60 days after January 1, they must file sworn statements showing what proportion of this stock is represented by capital located and employed in Colorado. Secs. 6284-6284b, 6285-6285c M. A. S.

This tax is payable on or before May 1, 1918, and each year thereafter.

Sections 6286-6291 M. A. S. are special provisions for the collection of the flat tax, allowing the Attorney General to sue for it or to bring quo warranto to disfranchise the delinquent corporation.

Secretary of State Notify Companies.

Section 4 of the original Act of 1907 [§ 5598 R. S. '08] required the Secretary of State to notify every company from year to year when such tax became due. But this section was repealed by Act of 1911, p. 261.

Sec. 6292 M. A. S. Fiscal Year for Flat Tax.

For the purpose of the foregoing tax, the fiscal year for basing such tax shall begin with May first of each year and end April 30th of the succeeding year.—R. S. '08, § 5604.

The provisions of the Act of 1902, denying to any corporation in default on this tax the right to bring or defend any suit while so in default, so seemingly a violation of the constitutional right to the protection of the court, were left out by the amendments of 1907. The same objectionable clause remains in the sections requiring the payment of the fees to the Secretary of State upon recording original articles or upon amendment of articles.—Secs. 1038, 1041 M. A. S. But the instances where the clause might become operative for such default would be very rare.

Section 1044 M. A. S. denies legal protection to any foreign corporation which fails to pay the fee demanded by the section.

Suit was brought to recover the flat tax for seven years and penalties. The Court held that the suit was not barred by any Statute of Limitations, that the tax and penalties could be sued for as a debt, holding all material points in favor of the people except to intimate a doubt whether the tax could continue to accrue after the company ceased to do business.

The Court say: "It was not the design of the Legislature to put corporations out of business but to get revenues from them." But they do not negative the fact that the effect of this statute is to put them "out of business."—Pinnacle Co. v. Peo., 58 Colo. 86, 143 Pac. 837.

Exemption of Ditch Rights.

Sec. 3. * * * Ditches, canals and flumes owned and used by individuals or corporations, for irrigating lands owned by such individuals or corporations, or the individual members thereof, shall not be separately taxed so long as they shall be owned and used exclusively for such purpose.—Constitution, Art. X.

The fifth paragraph of section 6197 M. A. S. is declaratory of the foregoing citation from the Constitution, repeating it almost verbatim.

The ditch exemption clause is construed in *Empire Land Co. v. Rio Grande County*, 21 Colo. 244, 40 Pac. 449, to the effect that where the ditch is owned by the corporation or its shareholders, who also own the irrigated land, the ditch is exempt.—Secs. 6477, 6478 M. A. S.

Other Exemptions.

Not-for-profit cemeteries are also exempt and the property of all municipal corporations; also certain property held for church, school or strictly charitable purposes.—Sec. 6197 M. A. S. With these exceptions no other corporate property is exempt.

By section 3555 M. A. S. insurance companies seem to be exempt from the flat tax.

Sec. 6287 M. A. S. Not-for-Profit Companies—Ditch Companies and Lodges, Exempt From License Tax.

Nothing in this Act shall be construed as imposing a license tax upon corporations strictly for educational, social, literary, scientific, religious or charitable purposes, or ditch or irrigation corporations whose property is exempt by law from taxation, or upon charters incorporating Masonic lodges, Odd Fellows lodges, or other fraternal or benevolent societies.—R. S. '08, § 5599.

Shares Not Taxable Except Bank Shares.

By section 6400 M. A. S., "corporate stock shall be deemed to represent the corporate property and except in case of banking corporations shall not be taxed. The taxpayer need not return such stock in his schedule."

Section 6400 M. A. S. construed and held valid exempting all stock except bank stock, in corporations, both foreign and domestic, from taxation.—*Denver v. Hobbs Estate*, 58 Colo. 220, 144 Pac. 874.

List of Stockholders.

By the same section the proper officer of any corporation, "the shares of which are taxable by law," is required on request to certify to the treasurer a list of the stockholders. Taking the exempting clause above quoted in connection with the phrase in this paragraph quoted, it would seem to us that this list could be required of banking corporations only.

Federal Taxes.

In 1909 Congress began exercising its revenue power by imposing taxes on corporations.

The Acts now in force were approved September 8, 1916, and October 3, 1917.

Four distinct taxes are levied which may be described as, (1) the Excise Tax, (2) the first Income Tax 2 per cent, (3) the Second Income Tax 4 per cent, and (4) the War Excess Profits Tax.

The Excise Tax.

The Act of September 8, 1916, places on every domestic corporation a tax, "Equivalent to 50 cents for each \$1,000 of a fair value of its stock," not including the first \$99,000 of such stock so that it only applies to corporations whose stock has an actual, not face nor par value, in excess of \$99,000. The corporate income cuts no figure on this tax as it applies whether the company has made a profit or suffered a loss during the last year but it does not apply to idle companies "not engaged in business during the preceding taxable year."

Where the market value of the stock is \$75,000 or more every corporation must fill out a report on form 707, a blank furnished by the Government, showing the total number of shares outstanding and many other details and if such return shows a market value in excess of \$99,000 the taxes are assessed accordingly.

First Income Tax.

By Section 10 of the Act of 1916 as amended by the Act of 1917, corporations must pay 2 per cent upon their net income.

Second Income Tax.

By the Act of October 3, 1917, an additional 4 per cent income tax must be paid. This makes two distinct income levies totaling 6 per cent.

Instance.

Below follows an instance of the Excise and Income taxes of a corporation, including the War Excess Profits Tax.

A company having a capital of \$100,000 market value and a net income of \$20,000 would pay under the Excise Act and the two income acts:

Excise Tax, 50c on the \$1,000 over \$99,000....\$.50
Normal Income tax, 1916 Act, 2 per cent.....	400.00
Additional Normal Income tax, 1917 Act, 4 per cent	800.00

Leaving the net income after paying the taxes..\$18,799.50

The Excise Tax above, is only 50 cents, because \$99,000 of the \$100,000 capital is exempt.

Assuming the same corporation to have not been in existence during the pre-war period, that is not in existence until 1915 it would pay under the War Excess Profits Act, 20 per cent of the net income less the deductions allowed by Section 204, which are 8 per cent on the capital invested for the taxable year, plus \$3,000.

The figures would be, net profit.....	\$20,000
Deduct 8 per cent of capital invested.....	8,000
	<hr/>
	\$12,000
Deduct the specific item.....	3,000
	<hr/>
	\$9,000
Pay 20 per cent on this \$9,000, which is.....	1,800
Making the total tax:	
For Excise Tax	\$.. 50
For Normal Income Taxes.....	1,200.00
For War Excess Profits Tax.....	1,800.00
	<hr/>
	\$3,000.50

War Excess Profits Tax.

By the Act of October 3, 1917, a graded War Excess Profits Tax is levied, ranging from 20 per cent to 60 per cent on the net income after certain deductions.

The wording of the Act is such that it cannot be practically enforced unless amended, as it doubtless will be, because such amendment is demanded by the patent uncertainties in the very language of the Act. With no disposition to find fault with these statutes and allowing for the fact that the field attempted to be covered is vast, nevertheless the Acts are conspicuous for their involved wording.

No definition can be made of the basic words "Income," "Profits" and "Invested Capital" which will satisfy the taxpayer however conscientious and the publican who sits at the receipt of custom.

The Excise and Income taxes in non-complicated cases may be arrived at as shown by the illustration above printed.

In fact, after the taxpayer makes his return the collector determines the amount due and in many instances it will

require conference or correspondence with such officer with legal advice on the presentation of full data on questions of bookkeeping and the items to be deducted to ascertain the exact amount due.

All corporations must pay this War Excess Profits Tax where their net income exceeds the \$3,000 flat exemption plus the exemption of not less than 7 nor more than 9 per cent of invested capital for the taxable year.

Pre-War Period.

Companies doing business prior to 1914 come under the pre-war clause. The tax to be paid by them is based on the average net income for the years 1911, 1912 and 1913, as compared to the net income and invested capital for the taxable year. Sections 201 and 202 of the 1917 Act provide for the percentage of tax to be paid and the manner of computing the net income.

Undistributed Surplus.

Every corporation which has an income for the year 1917 (or its own fiscal year) remaining undistributed six months after the end of such calendar or fiscal year, must pay 10 per cent on such undistributed capital after certain deductions covered by Sec. 10 of the Act. This practically applies only to large corporations with an accumulated surplus and does not apply where the undistributed money is held for contingent expenses.

Any part of this surplus invested in Government Bonds is deducted and the imposition of this tax seems to be intended as an inducement to make such investment.

All these taxes are for each calendar year except when the corporation has adopted a fiscal year of its own.

Exemptions.

All sorts of not-for-profit companies, social clubs, labor and agricultural companies, holding companies, mutual

associations, and fraternal benevolent societies are exempt under all the Acts.

Deductions.

In ascertaining the amount of corporate income all ordinary expenses of the current year including rentals are to be deducted; also taxes, losses not compensated by insurance and allowance for wear and tear.

Special provisions exist for the depletion of mines and oil wells.

But no allowance is to be made for new improvements or betterments.

Penalties.

Penalties of course are exacted for failure to make returns or for making false returns or for failure to pay the tax.

Regulations.

The details of collection are remitted to "Regulations of the Commissioner of Internal Revenue," carrying out a comparatively recent departure in legislation experimented with in the laws relating to the public land and other departments which compels the bar, the counsellors of their clients, to study not only the interminable legislation of Congress and the State Legislatures, but the regulations of the departments which are often arbitrary and always excessive in detail from the rulings of which departments there is practically no appeal or other relief. The constitutionality of such Acts was strongly opposed and at one time the Supreme Court was evenly divided on the point, but finally, in *U. S. v. Grimaud*, 220 U. S. 506, decided that Congress could relieve itself and the courts in this manner by shifting all responsibility to the staff of clerks in the departments.

Returns of their income are declared to "constitute public records and be open to inspection as such," with provisos which leave the right of inspection entirely to department rules.

Decisions.

Tax on stock dividends upheld as Income Tax. The income tax is constitutional. *Towne v. Eisner*, 242 Fed. 702. Distribution of accrued profits is not income. *Gulf Oil Corp. v. Lewellyn*, 242 Fed. 709.

Stamp Taxes.

On bonds, 5 cents for each \$100 of the debt. On penal bonds this percentage is based on the amount secured.

On surety or indemnity bonds, 50 cents; but when a premium is charged for each bond the tax is 1 per cent on each dollar of the premium.

On each certificate of stock, 5 cents on each \$100 of face value.

This particular stamp must be pasted on the stock book and not on the certificate of stock.

On every transfer of stock, 2 cents for every \$100 of face value. This stamp is not required where stock is transferred to brokers or as collateral security but as to such transfers to brokers minute and complicated requirements are stated in Sec. 4 of Schedule A of the Act.

Where the evidence of transfer is shown only by the books, the stamp must be placed on the book, where the certificate is transferred, it must be stamped.

Deeds, 50 cents for each \$500 or fraction of the value of the property conveyed if the value exceeds \$100.

On each proxy 10 cents.

On each power of attorney, 25 cents.

Promissory notes, 2 cents for each \$100.

CHAPTER LXVII.**COMMON LAW CORPORATIONS.****Inducements to Incorporate.**

The initial question of whether or not to incorporate is a pure business matter involving the consideration of but few factors. In general, where the investment is not large and the number of parties in interest is not great there is little to be gained by assuming a corporate name.

On the other hand, where the amount of money to be risked is large, the time to be covered considerable and especially where the capital is to come from many scattered contributors an incorporation becomes advisable if not absolutely indispensable. Where property is to be condemned there must be an incorporation and a line of any sort such as a railroad or telephone always demands it, barring ditch lines only. The general argument in favor of incorporation is that if the adventure is to result in a loss there is no personal liability for the debt. And although it ought not to be intended to create a debt and escape the moral obligation to pay it, it is equally unjust after a debt has been without fault incurred, to compel perhaps one or two solvent subscribers to pay the whole of it.

Under individual or partnership form of contract such is the result while under the corporate form each individual is liable only for the amount of his unpaid stock, that is, his contribution to the risk.

Any individual may withdraw or a new party may come in merely by selling or buying some shares of stock without the necessity of adjusting liabilities with the old associates as must be done in the case of a retiring or incoming partner.

No stockholder can by contract bind his fellow stockholders to their ruin, as might often happen by one partner

subscribing, as he lawfully might, to a contract perilous at the outstart and ruinous at its end.

The decease of a single partner dissolves the firm while the decease of any number of stockholders does not dissolve the corporation.

A loan by one partner to his firm must stand aside in favor of other debts of the firm, but a stockholder can lend to his corporation the same as an outside party.

Against the proposition to incorporate is to be considered that the administration expenses are increased and the flat tax above mentioned has to be met and where profits begin to accrue the federal tax comes against the company.

Common Law Corporations.

To escape from the statutory regulations of corporate life and especially to evade unequal and unjust taxes levied on the corporate body sundry devices have been suggested, such as unincorporated joint stock companies, cost-book companies, limited partnerships and associations doing business as trustees.

There is in Colorado a limited partnership act [Chapter 120 Mills Annotated Statutes], but it has only a restricted application.

If the experiment is tried in any other form there may be an escape from the flat tax and the fees to the Secretary of State, and if the adventure results in a profit so much may be gained. But if it results in a loss there seems no escape from the payment of such loss, certainly to the extent of the assets of the association in whatsoever form held, and in all probability no escape from personal liability. Any such form of corporate life without corporate birth is plainly liable to the Federal taxes and in general it may be said that most of these devices are mere evasions and where entered into it should be only upon the best legal advice that can be obtained.

Declaration of Trust.

State of Colorado
 City and County of Denver } ss.

KNOW ALL MEN BY THESE PRESENTS: That.....
and all of the City and
 County of Denver, State of Colorado, trustees of the Bunco Oil
 Company of Denver, Colorado, a common-law trust, are the own-
 ers of an oil and gas lease on certain properties situate in the
 County of Jack and State of Texas, which land is hereinafter
 fully described.

That said Trustees undertake to develop said property for
 oil and gas, and to raise funds for so doing, by selling beneficial
 interests in said property in the manner and under the con-
 ditions hereinafter set forth, do hereby acknowledge and declare:

1. That this trust shall continue during the life of the
 survivor of said Trustees and for twenty-one (21) years there-
 after, unless sooner dissolved in the manner hereinafter set
 forth.

2. That the purchasers of beneficial interests in said prop-
 erties shall be known as shareholders and this trust shall be
 known as the Bunco Oil Company in which manner it may
 contract and transact its business.

3. That this Trust shall have a capital of One Million
 Dollars (\$1,000,000.00), divided into One Million (1,000,000)
 shares of the par value of One dollar each; five hundred thousand
 (500,000) shares of said stock shall be issued to the Trustees in
 payment of the property to be transferred to the trust estate, as
 herein provided, and in payment of the service to be performed
 by the trustees and drilling of wells as hereinafter set forth;
 five hundred thousand (500,000) shares of said capital stock
 shall be offered for sale by the trustees or under their directions.

That said capital stock shall be sold at a price which will
 net the trust estate not less than ten (10c) cents per share.

That said stock may be sold on such terms as the Trustees
 may determine, provided, however, that no certificate shall be
 issued until the shares represented thereby are fully paid for.

4. That ownership of shares of beneficial interests in this
 trust shall be evidenced by certificates, in an appropriate form
 to be approved by the Trustees. That each certificate shall con-
 tain the name of the owner, shall state the number of shares
 it represents and shall be signed by the presiding officer of the
 Trustees, and countersigned by the secretary of the Trustees.
 That shares of beneficial interests shall be transferable, only

upon the books of the company upon surrender of the certificates to be transferred properly endorsed.

That such certificates shall be the sole and only evidence of ownership of shares of beneficial interests in this trust estate, and that ownership of such certificates, as shown on the books of the trust, shall be conclusive evidence of the rights of any person or persons to share in all the rights, privileges, profits and benefits arising from ownership of shares of beneficial interests in this trust estate, and that, neither the Trustees or any other officer or agent of this trust shall be in any way liable to any person by reason of acting upon such evidence of ownership, and the right so to do shall not be affected or abridged by any kind or character of notice.

5. That the management and control of the trust estate shall be vested in the trustees herein appointed.

That the Trustees are authorized to engage:

(a) In the business of searching, prospecting and exploring for mineral oil by boring or drilling therefor by any means.

(b) To buy, sell or lease in the United States, or in any other part of the world, real estate, concessions, rights and privileges in and to real estate for the purpose of prospecting for, obtaining, handling, storing, transporting, selling and disposing of mineral oil of all kinds and varieties, including petroleum; to borrow money, and to pledge or mortgage the properties of the trust estate, real or personal, to secure the payment of the same, to buy, lease, rent or otherwise acquire and to sell such property, real, personal or mixed, as to them may seem for the best interest of the trust; to declare and to pay such dividends as to them shall seem proper and for the best interest of the trust.

6. That the Trustees shall hold the legal title to all property at any time belonging to this trust, and subject only, to the specific limitations herein contained, they shall have the absolute control, management and disposition thereof, and shall likewise have the absolute control of the conduct of all business of the trust; and the following enumeration of specific duties and powers shall not be construed in any way as a limitation upon the general powers intended to be conferred upon them.

7. That the Trustees shall have authority to make all such contracts as they may deem expedient in the conduct of the business of the trust; to confer, by way of substitution, such power and authority on the President, Treasurer, Secretary and Executive Committee and other officers and agents appointed by them, as they may deem expedient; to collect, sue for, receive

and receipt for all sums of money at any time becoming due to said trust; to engage counsel, and to begin, prosecute, defend and settle suits at law, in equity or otherwise, and to compromise or refer to arbitration any claims in favor of, or against, the trust; and in general to do all things as in their judgment will promote or advance the business which they are authorized to carry on, although such matters and things may be neither specifically authorized. In addition to the powers herein granted, the Trustees shall have all powers with reference to the conduct and management of the property of the trust which are possessed by directors of corporations under the laws of any State of the United States or any foreign country.

8. That in so far as strangers to the trust are concerned, a resolution of the Trustees authorizing a particular act to be done shall be conclusive evidence in favor of strangers that such act is within the power of the Trustees; and no purchaser of any property belonging to the trust estate from the Trustees shall be bound to see to the application of the purchase money or other consideration paid or delivered by, or for, said purchaser to, or for, the Trustees.

9. That the Trustees shall be known as "the Board of Trustees of the Bunco Oil Company," and they shall act as a board and not individually.

That stated meetings of the Board of Trustees shall be held at least once a month, and other meetings shall be held from time to time upon the call of the president or a majority of the Trustees. A majority of the Trustees shall constitute a quorum; and the concurrence of all the Trustees shall not be necessary to the validity of any action taken by them, but the decision expressed by vote of a majority of the Trustees present and voting at any meeting, shall be conclusive.

10. That the Trustees may make, adopt, amend or repeal such by-laws, rules and regulations not inconsistent with the terms of this instrument as they may deem necessary or desirable for the conduct of their business and for the government of themselves, their agents, servants and representatives.

That the Trustees may also appoint from among their number or otherwise, and in their discretion, one or more vice-presidents, and one or more assistant treasurers and secretaries, and they shall have authority to appoint such other officers, agents and attorneys, as they may deem necessary or expedient in the conduct of their business, and shall have authority to remove from office, accept resignations, and to fill any vacancies in the offices appointed by them, for the unexpired term, and

shall likewise have authority to elect temporary officers who shall serve during the absence or disability of the regular officers, and may also by a majority vote of all the trustees remove any officer or agent appointed by them.

11. That the officers shall consist of a President, Vice President, Secretary and Treasurer.

The said and shall constitute the first Board of Trustees and the officers as hereinafter respectively designated. They shall serve until this trust is terminated, unless disqualified or resigned.

President
 Vice President
 Secretary
 Treasurer

12. That the President, Vice President, Treasurer and Secretary shall have the authority and perform the duties usually incident to those officers in other organizations so far as applicable thereto, and shall have such other authority and perform such other duties as may from time to time be determined by the Trustees. That the Trustees shall fix the compensation, if any, of all officers and agents whom they may appoint and may also pay themselves such compensation for their own services as they may deem reasonable.

That the Trustees may also appoint from among their number an Executive Committee of three persons, to whom they may delegate such of the powers herein conferred upon the Trustees as they may deem expedient.

That the Trustees shall cause to be kept by the Secretary elected by them a record of all meetings of the Board of Trustees and Executive Committee, which record shall be of the same character and effect as that kept in the case of corporations, and so far as strangers to the trust are concerned, shall be conclusive against the trust estate as to the facts and doings therein stated.

That the Trustees shall not be liable for any error of judgment or for any losses arising out of any act or omission in the execution of this trust, so long as they act in good faith, nor shall they be personally liable for the acts or omissions of each other, or for the acts or omissions of any officer or agent or servant elected or appointed by or acting for them; and they shall not be obliged to give any bond to secure the due performance of this trust by them.

That any Trustee may acquire, own and dispose of shares in this Trust to the same extent as if he were not a Trustee.

13. That a Trustee or officer may resign at any time by delivering to the Board of Trustees a written resignation together with such instruments, duly acknowledged for record as may be reasonably necessary to divert from him all his title, as such Trustee, in the trust estate. That a Trustee may be removed at any time for misconduct or breach of trust by vote of the other Trustees at any regular meeting of the Board of Trustees or any special meeting called for that purpose. That in case of the death, resignation or removal of any Trustee or Trustees, the remaining Trustees may, at the first regular meeting at which such resignation is accepted, elect from the owners of beneficial interests in this trust, a new Trustee, who shall succeed to all the rights, duties and obligations of the Trustee or Trustees so removed, as such, and shall qualify for the office by executing and causing to be placed on record a written acceptance of the trust.

14. That at the annual meeting of the Board of Trustees to be held in January of each year, the Board shall require the officers to submit a full statement of the condition of this trust, and all business transacted by it, and when said statement is approved, may cause a copy of same to be sent to each owner of one or more shares of beneficial interest in this trust.

That the Trustees from time to time shall determine whether and to what extent and at what times and places and under what conditions and regulations the accounts and books of the Trustees or any of them shall be open to the inspection of the shareholders, and no shareholder shall have any right to inspect any account or book or document of the Trustees except as authorized by the Trustees.

15. That all the property, real, personal and mixed belonging to or hereinafter acquired by this trust, shall be taken in the name of the Trustees who shall hold the legal title to all such property in trust for the owners of beneficial interests in this trust in the proportion which the amount of their interests bear to the total number of interests outstanding.

That all deeds or conveyances shall set forth that the grant is to the Trustees of the Bunco Oil Company, to be held subject to the declaration of the Trust.

That the interest and estate held by the Trustees in and to the trust property shall be held as joint tenants and not as tenants in common, provided, however, that in no event shall any right or interest in the trust estate vest in any heir or

beneficiary of any Trustee, even though such Trustee should be at the time of his death the sole surviving Trustee, but said trust estate, all right, title and interest held therein by said Trustee, as such, shall pass to and vest in his successor or successors, appointed by the Trustees in the manner herein provided.

16. That all owners of shares of beneficial interests in this trust shall own an undivided, equitable interest in all property of this trust, of every kind or character in the proportion which the number of shares owned by them bears to the total number of shares outstanding, and they and each of them shall be entitled to receive a like portion of all the profits and benefits arising from the operation of this trust, when, and as dividends are declared.

17. That any person, firm or corporation acquiring a share or shares in this trust by purchase, gift, inheritance, in satisfaction of, or as security of any debt, or in any other manner, assents to, accepts and approves all the terms, conditions, covenants and agreements contained in this declaration and all amendments thereto, and from the date such share is received, this declaration shall have like binding force and effect upon him, as if he were one of the original parties hereto.

18. That this declaration of trust and continuance of the trust herein provided for shall not be terminated, or the administration thereof in any wise interfered with or suspended by the death of any shareholder in same or by his incapability for any reason, or by his share or shares being by the process of law, subjected to the payment of a debt, or in any way vested in an heir, purchaser, creditor or assignee of such shareholder, or in any Trustee, receiver or officer of any court, or in any other person or persons, corporations or association, but any such person or persons, association, firm or corporation that may in any way or manner acquire or become vested with the ownership of such share or shares, shall simply and only succeed to and become entitled to all the rights and titles of the shareholder named therein, and his beneficial interest in the property of this trust, upon surrendering the original certificate or certificates to the association in proper form and manner and receiving therefor a new certificate. And notwithstanding such change of interest or ownership in any such certificate, or the death, incapacity, or insolvency of the original owner thereof, this trust shall continue and this declaration remain in full force until terminated as herein provided.

19. That shareholders in this trust shall have no legal right to the properties of this trust, real, personal or of any kind or character, now held or hereinafter acquired, and particularly they shall have no right to call for the partition of same or for the dissolution or termination of this trust, except as herein provided, but the shares in this trust shall be personal property carrying with it the right of the division of the profits made by the trust, and at the expiration of the time fixed herein for the continuance of this trust, or its dissolution in the manner herein provided, a division of the principal and profits.

20. That no shareholder in this trust shall ever be personally liable for any debt, demand or obligation of this trust of any kind whatsoever, whether arising out of contract or not. and neither the Trustees or any or all officers or agents appointed or elected by them, shall ever have any right or authority to bind any shareholder, personally or by contract, agreement or otherwise. The Trustees shall give such notice as may be necessary of this limited liability of the shareholders of this trust to the person, firm or corporation with whom this trust may deal; and in every written contract entered into by the trust or in its behalf, reference shall be made to this declaration of trust, and such contract shall contain a covenant or agreement on the part of the other parties to the contract that such party or parties will look only, to the funds and properties of the trust for the satisfaction of all claims and demands arising from or out of such contract, and for all debts, engagements, contracts and liabilities of any kind or character incurred by this trust, the funds and properties of this trust shall stand primarily charged to the end that the shareholders of this trust may be protected from personal liability. It is further expressly agreed that in case any Trustee, officer or shareholder shall at any time for any reason be held to or be under any personal liability as such Trustee, officer, or shareholder not due to his acts in bad faith, then such Trustee, officer, or shareholder, shall be held harmless and be indemnified out of the trust estate from any and all loss, cost, damage, or expense by reason of such liability; and if at any time the trust estate shall be insufficient to provide for such indemnity and to satisfy all liabilities of, and claims upon it, then the trust estate shall, in preference and priority over any and all other claims or liens whatsoever, except mortgages, and except as otherwise expressly provided by law, be applied first to the indemnification of the Trustees from any loss, cost, damage, or expense in connection with any personal liability which they may be under

or have incurred except as aforesaid; next, to the indemnification in the same manner of the officers, and thereafter to the indemnification in like manner of the shareholders.

21. That the shareholders of this trust shall meet at any time at Denver, Colorado, when such meeting is called by the Board of Trustees. Meetings of shareholders shall be called, only, to determine and act upon the following matters:

(1) To determine whether or not the trust shall be terminated prior to the time fixed herein, and, if so, to provide the terms and conditions for so doing.

(2) To determine whether or not the capital of the trust shall be increased or decreased and to provide the terms and conditions for so doing.

Notice of the time and place of such meeting shall be given by the Secretary by mailing to each shareholder at his last address, as shown by the books of the company, a written or printed notice of said meeting, which notice shall state the time and place of said meeting, and the object for which it is called.

22. That, it shall be the duty of the Trustees to faithfully and diligently administer this trust, and to keep correct and accurate records and accounts of all business transacted, to exercise prudence, and economy in the transaction of the business of this trust, to act in good faith and, only, for the best interest of the trust in all business transactions in its behalf; to diligently care for and keep the property of the trust; and at the termination of the same, to render up and deliver all the properties and funds of the trust, and in all things to so handle the funds and properties of this trust as diligent and prudent men acting in their own behalf; the Trustees herein appointed by signing this instrument, and their successors by accepting this trust, bind themselves so to do.

23. That all salaries of Trustees, or agents or servants appointed by them, actively engaged in administering this trust, and who shall be entitled to reasonable compensation for their services, and all expenses incurred in administering this trust and in carrying out the purposes for which it was created, as well as the expense of safely keeping and caring for the trust properties, shall be proper charges on the trust funds and shall be paid therefrom. The Trustees shall pay such dividends from time to time from the profits accruing from the operations of this trust as to them may seem best.

24. That the shareholders in this trust shall have the right and authority at any meeting legally called by the Trustees to:

(1) Increase or decrease the capital of this trust.

(2) Terminate this trust and such incidental powers as may be necessary to carry out the powers stated above.

(3) In the event that all of the Trustees named in this declaration of trust or their successors should die, then and in that event, the shareholders shall elect Trustees to fill the vacancies at a meeting of the shareholders, which may be called for that purpose, only, by one or more of the shareholders of beneficial interest in this trust.

25. That the oil and gas leases above mentioned, which are to be held in trust by the signers hereof for the shareholders in this trust, and for which they are to receive the shares as herein provided are known and described as follows: (Enter description here.)

IN WITNESS WHEREOF, the said,,
and, Trustees hereinbefore mentioned, have here-
unto set their hands and seals in token of their acceptance of
the trust hereinbefore mentioned, for themselves and their
successors, this 4th day of September, A. D., 1922.

..... (Seal)

..... (Seal)

..... (Seal)

Trustees.

State of Colorado }
City and County of Denver } ss.

I, Evelyn Koon, a Notary Public in and for said County,
do hereby certify that, and
....., who are personally known to me to be the
same persons described in, and who executed the within declara-
tion of trust, personally appeared before me this day and ac-
knowledgeed that they signed, sealed and delivered the same
as their free and voluntary act and deed.

Witness my hand and Notarial Seal this fourth day of Sep-
tember, A. D. 1922.

My commission expires

Evelyn Koon,

(Seal)

Notary Public.

The above Declaration of Trust contains all of the
essentials; and by making the few changes necessary can
be worked over for any kind of a business association.
Some of the Trust Agreements provide for the annual
election of Trustees by the shareholders. This may be
added as an additional article, though we do not recommend
this attempt to follow an incorporated company.

Many of the trust agreements also provide an article in which the form of the Certificate of Shares is fully set out; this may be done without affecting the Trust, but it is not necessary.

The following wording for the Certificate of the Beneficial Interest Shares is suggested, containing all the necessary provisions:

CERTIFICATE OF BENEFICIAL INTEREST SHARES.

No. _____ Shares _____

BUNCO OIL COMPANY
Capitalization, One Million Shares
Par Value One Dollar Each
DENVER, COLORADO

THIS IS TO CERTIFY, That.....
 is the owner of.....shares, fully paid and non-assessable, par value One Dollar each, of a beneficial interest in the BUNCO OIL COMPANY, a Common Law Company, transferable only on the books of the company by the owner thereof in person, or by duly authorized attorney, upon the surrender of this certificate properly endorsed. This certificate is held subject to an Agreement and Declaration of Trust, dated....., A. D. 192...., a duplicate original of which is on file with the Trustees, and which is also recorded in the County Clerk and Recorder's office in the City and County of Denver, State of Colorado, and which is hereby referred to and is made a part of this certificate.

No member of said Company or owner or holder of this certificate, as such, shall have any authority, power or right whatsoever to do or transact any business for, or on behalf of, or binding upon the Company, or any member thereof; and no Trustee or member of this Company shall ever be personally liable for any deeds, covenants, contracts or torts of any kind of this Company.

IN WITNESS WHEREOF, The said organization has caused this certificate to be signed by its duly authorized officers and its seal to be hereunto affixed, this..... day of, A. D. 192....

BUNCO OIL COMPANY

Attest:

Secretary of Board

By

President of Board.

CHAPTER LXVIII.

HOLDING CORPORATIONS.

Holding Companies.

A holding corporation is one organized to carry the stock of one or more other corporations for purposes of control or for ultimate distribution. No such power exists unless in the objects of the company is expressed the right to buy the stock of other corporations.

It is usual among large incorporations whose directors are interlocked, and obviously at the outstart it faces peril with statutes against trusts and the common law against monopolies.

Where it is to hold stock merely as a trustee to distribute among beneficiaries there seems to be no legal objection to the plan and it is not in violation of the harmless declaration against trusts found on page 613 of the Acts of 1913, which seems to be limited to monopolies and combinations to fix prices.

But no holding company should be incorporated without legal advice and as a rule an unincorporated association of two or three trustees will carry out the object and avoid some of the possible legal objections.

Holding companies of national repute were involved in *Standard Oil Co. v. U. S.*, 221 U. S. 1; *International Harvester Co. v. Missouri*, 237 Mo. 369, 234 U. S. 199, and *State v. Polar Wave Ice Co.*, 259 Mo. 578. The judicial power to disfranchise and impose unlimited fines as ex-welcome than the exercise of unlimited judicial power to exercised in the last citation may well leave the citizen in doubt as to whether the tyranny of a trust is not less unfine and confiscate.

CHAPTER LXIX.**DISSOLUTION.****Sec. 1030 M. A. S. Last Board of Directors Have Full Power to Wind Up the Company.**

Upon dissolution by expiration of its charter or otherwise of any corporation now existing or which may hereafter be formed, unless some other persons or persons be appointed by some court of competent jurisdiction, the board of directors or trustees of such corporation or the managers of the corporate affairs, by whatever name known, acting last before the time of their dissolution, and the survivors of them, shall be the trustees of the creditors and stockholders of the corporation dissolved, and shall have full power to settle the affairs of the same; to sue for and collect the debts and moneys due to the corporation, or to compound and settle any claims thereof, as they may deem best; to have, hold, reserve, sell and dispose of property, real and personal, of any such corporation dissolved; to adjust and pay all the debts of the corporation dissolved; to divide the residue of the moneys and property belonging to the corporation dissolved, after payment of debts and the necessary and reasonable expenses, among the stockholders holding stock in such corporation, in proportion to the amount paid upon stock of each stockholder. All such trustees shall be jointly and severally liable to the creditors and stockholders of such corporation dissolved, to the extent of the property and effects which shall come into their hands or possession of any of them, for a proper and faithful discharge of the duties of said trust and disposal of said property and effects.—R. S. '08, § 894.

Sec. 1031 M. A. S. Dissolution of Corporations—Notice.

Whenever the stockholders of any corporation, formed under the laws of the State of Colorado, desire to dissolve the corporation, prior to the time limited by law, or by the terms of its articles of incorporation, they may do so upon a vote of two-thirds ($\frac{2}{3}$) of the entire stock of the corporation, at a meeting of the stockholders of said corporation, which shall have been called for the purpose of considering the propriety of dissolving such corporation; but such dissolution shall not take place until all debts owing by the corporation shall have been fully paid. And notice of such meeting is to be given, in the manner provided

by law for the calling of stockholders' meetings for the purpose of amending articles of incorporation. And when a dissolution shall have been so ordered, the president and secretary of such corporation shall make and sign a notice of dissolution, under the seal of such corporation, one copy of which shall be filed in the office of the Secretary of State, and one copy of which shall be filed in every county in which the articles of incorporation of such corporation were filed; and a copy of such notice shall be published in some newspaper printed in each of said counties, for the period of six (6) weeks; and, upon filing and publication of such notice, as aforesaid, such corporation shall be deemed to have been dissolved forever. *Provided*, that the incorporators or the directors or a majority thereof named in the articles of incorporation to act for the first year, upon making affidavit, showing that the company, corporation, association, joint stock company or other organization, has not completed its organization, contracted no indebtedness, issued no stock, other than shares to qualify the first board of directors, is not possessed of any corporate assets, or that the corporation has never exercised any of its corporate power, shall be empowered to dissolve such corporation by filing notice of dissolution in the office of the Secretary of State and a copy thereof in the office of the Clerk and Recorder of each county in which the original articles of incorporation were filed, and, upon the filing of such notice of dissolution, such corporation shall be forever dissolved. Such dissolution shall not take away or impair any remedy given against such corporation, its stockholders, directors, incorporators, trustees or any one legally connected therewith, for any liabilities incurred previous to such dissolution.—L. '19, p. 357, § 12, amending R. S. '08, § 895.

Sec. 1032 M. A. S. Distribution of Property.

All property belonging to such corporation at the time of the dissolution shall, by the trustees or directors of such corporation, be converted into cash, and distributed pro rata among the stockholders of the said corporation; said distribution to take place within six (6) months from the time of converting said property into cash.—R. S. '08, § 896.

Sec. 1033 M. A. S. Title of Property on Dissolution— Where Vested.

The title to all real and personal estate belonging to any such corporation shall, immediately upon the dissolution there-

of, unless by a decree of court of competent jurisdiction, declaring such dissolution, it is otherwise ordered, pass to, and rest in such trustees, directors or managers, and an action at law may be maintained by such trustees or directors, or the survivors of them, in their own names by the style of the trustees of such corporation dissolved, naming it, for the recovery of all such property, or of any damage done to the same, or for the recovery of any debts due such corporation dissolved.—R. S. '08, § 897.

Sec. 1034 M. A. S. Notice of Dissolution Filed With Secretary of State.

It shall be the duties of the officers and directors of all corporations that may desire to discontinue business or dissolve the corporation prior to the time limited by law, or the time specified in the articles of incorporation, to file notice of such dissolution in the office of Secretary of State.—R. S. '08, § 898.

Sec. 1035 M. A. S. Effect of Dissolution.

The dissolution for any cause whatever, of corporations created as aforesaid, shall not take away or impair any remedy given against such corporations, its stockholders, or officers, for any liabilities incurred previous to its dissolution.—R. S. '08, § 899.

The above are all the sections of the Colorado Statutes prescribing the procedure to dissolve a solvent corporation. A summary of their contents is that when the dissolution takes place the members of the last board of directors become trustees to wind up its affairs.—Sec. 1030 M. A. S. They collect the assets, convert them into cash and distribute among the stockholders pro rata.—Secs. 1032, 1033 M. A. S. Section 1034 M. A. S. is a duplication of some of the requirements of sections 1031 and 1035 M. A. S. is a clause saving all rights of action accrued against the corporation dissolved, its officers and stockholders. How a right of action could survive against a body which has ceased to exist we cannot conceive, but its assets would be a fund which could take its place.

Where a corporation conveyed all its property and at the same time all its stock was assigned to its grantee it

was held to be a sale of the property rather than of the stock and the proceeds belonged to the company to be distributed to the original shareholders.—*Pendery v. Carleton*, 87 Fed. 41. .

The fact of dissolution cannot be pleaded in bar to a cause of action which arose during the company's corporate life.—*Steinhauer v. Colmar*, 11 Colo. App. 495, 55 Pac. 291.

Sec. 1036 M. A. S. Allowing Judgment to Stand Unpaid and Other Instances.

Dissolution of Insolvent Company.

. If any corporation, or its authorized agent, shall do any act which shall subject it to a forfeiture of its charter or corporate powers, or shall allow any execution or decree of any court of record for a payment of money, after demand made by the officer, to be returned "No property found," or to remain unsatisfied for ten days after such demand, or shall dissolve or cease doing business, leaving debts unpaid, suits in equity may be brought against all persons who were stockholders at the time, or liable in any way for the debts of the corporation, by joining the corporation in such suit, and each stockholder may be required to pay such debts or liabilities to the extent of the unpaid portion of his stock.

Receiver.

And courts of equity shall have full power, on good cause shown, to dissolve or close up the business of any corporation, to appoint a receiver therefor, who shall have authority by the name of the receiver of such corporation (giving the name), to sue in all courts, and to do all things necessary to closing up its affairs as commanded by the decree of the court.—R. S. '08, § 900.

A company in debt and unable to meet its obligations or which is dissolved by quo warranto proceedings comes under the terms of the above section. The mode of procedure is by application for a receiver, and the stockholders become personally liable to the extent that their stock may

remain unpaid.—*Universal Ins. Co. v. Tabor*, 16 Colo. 531, 27 Pac. 890.

Where stock is sold for less than par an assignee in bankruptcy can sue only for the amount of the company's indebtedness, and must file bill to set aside the contract of original sale, which is valid as to all except creditors.—*Felker v. Sullivan*, 34 Colo. 212, 83 Pac. 213.

A court of equity has no power at the suit of a stockholder to appoint a receiver nor to dissolve a corporation for fraud in its operations.—*Peo. v. District Court*, 33 Colo. 293, 80 Pac. 908.

A corporation cannot be dissolved in a collateral proceeding.—*Union M. Co. v. Bank*, 1 Colo. 531.

The appointment of a receiver does not operate to dissolve the company.—*Jones v. Bank*, 10 Colo. 464, 17 Pac. 272. Nor can the officers of the company surrender its franchise.—*Id.*

In *Smith v. Taggart*, 87 Fed. 94, a transfer of its funds found in this State was ordered to be made to the assignee in its local state who was the first in time to take proceedings to wind it up.

Insolvency alone does not prevent a corporation doing business. Nor does its assets become a trust fund for equal distribution. Whoever has prior rights by a first attachment or as a preferred creditor is to be first paid.—*Breene v. Bank*, 11 Colo. 97, 17 Pac. 280; *Jones v. Bank*, *supra*; *Farwell Co. v. Sweetzer*, 10 Colo. App. 421, 51 Pac. 1012.

Although dissolved the corporation may still be a party to a suit on a cause of action arising before its dissolution.

The Last Board of Directors are its trustees to wind up its affairs but the members of such board are not necessary parties where they had already made an assignment.—*Kipp v. Miller*, 47 Colo. 598, 108 Pac. 164.

But barring such an instance, the corporate body being non-existent, its legal successors would be essential parties in any suit which attacks its funds or assets.

The United States Circuit Court has no inherent power as a court of equity to wind up an English corporation working a mine in the United States, nor will it enjoin a winding up by the English shareholders alleged to be acting under improper motive so long as they comply strictly with the forms of law.—*Republican Mines v. Brown*, 58 Fed. 644.

A corporation dissolved by judgment of ouster, in the district court, sued out of a writ of error to reverse this judgment and procured a supersedeas. Held, still a corporation *de facto*.—*Fisher v. Pioneer Co.*, 62 Colo. 538, 163 Pac. 851.

A judgment rendered against a dissolved corporation, upon a cause of action arising before dissolution, is valid.—*Welsh v. Steinbaugh*, 64 Colo. 177, 171 Pac. 62.

Under section 1035 M. A. S. an action may be maintained against a dissolved corporation, upon a cause of action arising before dissolution, and judgment may go against it, notwithstanding the provisions of section 1030 M. A. S.—*Lucifer Co. v. Buster*, 64 Colo. 179, 171 Pac. 61.

Trustees having converted all the property of a deceased corporation to another, receiving only the stock of the latter, were liable at law to a corporate creditor. The creditor was not under duty to proceed in equity against the new corporation.—*Welsh v. Steinbaugh*, 64 Colo. 177, 171 Pac. 62.

The dissolution of a corporation does not affect remedies against the corporation.—*Dutton Hotel Co. v. Fitzpatrick*, 69 Colo. 229, 193 Pac. 549.

A conveyance by the surviving trustees of a dissolved corporation to a third person to enable such grantee to effect a sale for the benefit of the stockholders and creditors will be sustained.—*Rassieur v. Cliff Mining Co.*, 63 Colo. 321, 166 Pac. 241.

CHAPTER LXX.

EXTENSION OF TERM.

Sec. 1025 M. A. S. May Extend Term of Existence.

When the term of years for which any corporation organized under the laws of this State has expired or is about to expire by lawful limitation, and such corporation has not been administered upon as an expired corporation, or gone into liquidation, or had any settlement of its affairs, it may have its term of incorporation extended and continued the same as if originally incorporated, as hereinafter provided.—R. S. '08, § 891.

Sec. 1026 M. A. S. Special Meeting—Certificates of Renewal—Powers Not Enlarged—Toll Roads.

A special meeting of the stockholders of said corporation may be called by stockholders owning at least ten per cent of the entire capital stock of said company. Notice of such meeting, stating the time and place thereof, and the purpose for which it is to be held, shall be published for four consecutive weeks in a newspaper printed nearest the place where the said corporation has kept its principal office, and likewise mailed to each stockholder of the company at least thirty days prior to the time fixed for said meeting. At such meeting the question of renewal shall be submitted to the votes of the stockholders of said company; *Provided*, A majority of the stock of the corporation be represented.

The votes shall be taken by ballot, and each stockholder shall be entitled to as many votes as he owns shares of stock in said company, or holds proxies therefor; and if a majority of the entire outstanding capital stock of the company shall be voted in favor of a renewal of the corporation, the president and secretary of said company shall, under the seal of said company, certify the fact, and shall make as many certificates as may be necessary, so as to file one in the office of the recorder of deeds in each county wherein the company may do business, and one in the office of the Secretary of State.

And thereupon the corporate life of said company shall be renewed for another term of not exceeding twenty years from the date of the expiration, upon filing the certificates aforesaid;



and all the stockholders shall have the same rights in the new corporation, so extended, as they had in the company as originally formed; *Provided*,

First.—As to all such corporations whose charters have heretofore expired, the call for such meeting shall be signed and such extension shall be authorized by the owners of two-thirds of the capital stock of the corporation then issued and outstanding; and said certificates shall be duly filed as above required within four years of the expiration of the charter to be renewed, and within one year from the date when this Act shall take effect.

Second.—As to all other of such corporations, said certificates shall be filed before or within one year after the expiration of the charter to be so renewed.

Third.—Upon filing said certificates, such corporation shall pay to the Secretary of State the same fees as are provided by law for filing new certificates of incorporation.

Fourth.—The extension of the term of existence of any such corporation in the manner herein provided, shall not be so construed as to extend or renew any corporate franchises granted by any county or municipality possessed by such corporation, or to give to such corporation during the extended term of its existence any rights which such corporation would not have possessed had the same been incorporated as an original corporation at the date of the extension of the term of its existence; nor as enlarging any of the powers, privileges or franchises heretofore enjoyed by such corporation.

Fifth.—The provisions of this Act shall not apply to a renewal of the charters of toll road companies.—R. S. '08, § 892.

[Filing fees above referred to are found in section 1038 M. A. S.]

The above section plainly directs the procedure in case of renewals of term of corporate existence. In this connection we may add that the twenty-year limitation of corporate life is entirely without reason behind it. The corporate life should be perpetual, as it used to be under ancient charters, or at least for a much longer term than twenty years.

Section 1027 M. A. S. is an isolated section referring to extension of corporate life of colonial companies only, which is supplemented by a later special Act [§§ 1028, 1029 M. A. S.] confined to the same limited class of com-

panies organized "under the Acts of Colorado Territory."

Section 1100 M. A. S. is a superfluous section, repeating the same right as to ditch companies already conferred under the terms of the general sections.

Upon the expiration of its corporate term the corporate life ceases ipso facto, its deed thereafter is a nullity, and it can be collaterally attacked.—Bradley v. Reppell, 133 Mo. 545.

Sections 1025, 1026 M. A. S. authorizing a corporation whose charter has expired by limitation to renew the same within one year does not require the trustees holding office at the date of the expiration of the charter to postpone action as trustees, under section 1030 M. A. S. They may proceed at once to convert the corporate property into money, discharge its debts, and distribute the residue among the stockholders.—Welsh v. Steinbaugh, 64 Colo. 177, 171 Pac. 62.

Sections 1025-1026 M. A. S. providing that within one year from the expiration of its term of existence, a corporation may extend the term for another twenty years, do not *ipso facto* create an extension for one year.—Bonfils v. Hayes, 70 Colo. 336, 201 Pac. 677.

CHAPTER LXXI.

INCORPORATED HERE TO OPERATE ELSEWHERE.

Sec. 991 M. A. S. Colorado Corporations Doing Business Outside the State.

It shall and may be lawful for any corporation created or existing under the laws of this State for the purpose, among others, of exercising its franchises or carrying on part of its business beyond the limits of this State, and in another state or territory of the United States or elsewhere, to accept any law of such other state or territory of the United States, or foreign state and government, and to exercise within the territory of such other state or territory, or foreign state and government,

all such authorities, powers, privileges, rights and franchises as may be by such laws conferred, subject to such duties, liabilities and restrictions as may by such laws be imposed.—R. S. '08, § 861.

When a corporation is organized in this State to carry on business in another state it is, in the state where it does business, a foreign corporation, and must comply with the laws of that state concerning foreign corporations. In the matter of annual reports, liability of officers, assessments, it must comply with the laws of Colorado, the same as if doing business here. As to conveyance of its realty outside the State it would be governed by the laws of such state. The language of the section when analyzed amounts to nothing more than permission to organize here to do business in another state. It cannot "accept any law of such other State" to relieve it of any obligations to this State as one of its citizens.

The above paragraph is a reprint of what was said of Sec. 991 M. A. S. in the second edition of this book. It is difficult either to enlarge upon the paragraph or to qualify it. This section is one of those statutes which have no apparent purpose other than to create confusion. How such corporation is to "accept" the law of another state is not prescribed, nor is it possible to imagine except that as a matter of course, by doing business in another state it comes under the protection of and obliged to obey the laws of such other state.

In *McCague v. Dodge*, 50 Colo. 205, 114 Pac. 648, a Colorado corporation seems to have accepted the laws of another state, Nebraska, although the opinion does not refer to Sec. 991 M. A. S. All that the case decides is that a receiver appointed in Nebraska could not collect assessments against stockholders in Colorado and that the jurisdiction of the Nebraska court was confined to assets found in that State.

A corporation organized under our laws is a resident of Colorado and cannot depart therefrom.—*Jotter v. Marvin Inv. Co.*, 67 Colo. 555, 189 Pac. 22.

Business Beyond State.

ARTICLE.—A part of the business of said company shall be carried on beyond the limits of the State of Colorado.

The general clause in section 980 M. A. S. that “when any company shall be created under the laws of this State for the purpose of carrying on part of its business beyond the limits thereof such certificate shall state that fact” does not seem to require anything more specific than the language of the above article, and in many cases it would be practically impossible to define either the locality or the extent of such outside business.

Office Beyond State.

But where it is intended to have an office outside the State, at which board meetings may be held, it should specifically designate the place.

ARTICLE.—A part of the business of said company shall be carried on at the city of Chicago, county of Cook, State of Illinois, and the principal office of said company out of the State shall be at said city of Chicago, at which office meetings of directors may be held.

See articles 7 and 8 in form on page 127.

Such article does not oblige the company to file its papers with the Secretary of the outside state unless so required by the statute law of the particular state where the office is held.

CHAPTER LXXII.

FOREIGN CORPORATIONS.

Sec. 10. Foreign Corporations—Place—Agent.

No foreign corporation shall do any business in this State without having one or more known places of business, and an authorized agent or agents in the same, upon whom process may be served.—Const., Art. XV.

Sec. 1056 M. A. S. Must File Copy of Articles and of State Statute.

Every company incorporated under the laws of any foreign state or kingdom or of any state or territory of the United States, beyond the limits of this State, and now or hereafter doing business within this State, shall file in the office of the Secretary of State a copy of their charter of incorporation; or in case such company is incorporated by certificate under any general incorporation law, a copy of such certificate and of such general incorporation law duly certified and authenticated by the proper authority of such foreign state, kingdom or territory.—R. S. '08, § 916.

Sec. 1057 M. A. S. Designation of Place of Business and Agent.

Foreign corporations shall, before they are authorized or permitted to do any business in this State, make and file a certificate, signed by the president and secretary of such corporation, duly acknowledged, with the Secretary of State, and in the office of the recorder of deeds of the county in which such business is carried on, designating the principal place where the business of such corporation shall be carried on in this State, and an authorized agent or agents in this State residing at its principal place of business upon whom process may be served.

Subject to Colorado Statutes.

And such corporation shall be subjected to all the liabilities, restrictions and duties which are or may be imposed upon such corporations of like character organized under the general laws of this State, and shall have no other or greater powers.

Protection to Domestic Creditors.

And no foreign or domestic corporation, established or maintained in any way for pecuniary profit of its stockholders or members, shall purchase or hold real estate in this State, except as provided for in this Act, and no corporation doing business in this State, incorporated under the laws of any other state, shall be permitted to mortgage, pledge or otherwise encumber its real or personal property situated in this State, to the injury or exclusion of any citizen, citizens or corporations of this State, who are creditors of such foreign corporation, and no mortgage by

any foreign corporation, except railroad and telegraph companies, given to secure any debt created in any other state, shall take effect as against any citizen or corporation of this State, until all its liabilities due to any person or corporation in this State at the time of recording such mortgage, have been paid and extinguished.

Publish Notice of Intention to Mortgage.

Provided, however, That if any foreign corporation other than those expressly mentioned herein, intending or desiring to mortgage any or all of its property for any debt created or to be created in any other State, shall give notice of such intention or desire by publication for six (6) successive weeks prior thereto, in some daily or weekly newspaper printed within the county wherein the property so intended or desired to be mortgaged is situated, or if there be no such newspaper, by posting such notices in five (5) public places within such county, requesting all citizens and corporations of this State, having any claims or demands of any kind or nature whatsoever against the said foreign corporation, to file the same duly verified with the county clerk of the county in which such property so desired to be mortgaged is situated, on a date specified in such notice, which date shall be subsequent to the date of the last publication of such notice or in case of failure so to file such claim or demand, then and in such case, a mortgage given by such foreign corporation to secure any debt created in any other state, shall take effect as against any citizen or corporation of this State, who shall fail to file his or its claim.—R. S. '08, § 917.

The constitutionality of that part of section 1057 M. A. S. preferring domestic to foreign creditors is strongly questioned in *Brittle S. Co. v. Rust*, 10 Colo. App. 463, 51 Pac. 526.

Sec. 1058 M. A. S. Documents, Where Filed—Copies Evidence—Originals.

* The several certificates, statutes and charters mentioned in section twenty-four (24) of this Act, shall be by the Secretary of State filed and preserved in his office as a part of the record thereof, and he shall be entitled to a fee of fifty cents for receiving and filing every such certificate and statute. Copies of such charters, statutes and certificates, duly certified by the Secretary of State under his seal of office, shall be received in all courts of

this State, as sufficient evidence of the corporate character of such incorporations, and of all their powers, duties and liabilities, and the originals thereof may in like manner be used in evidence of these matters, with like effect.—R. S. '08, § 918.

[For foreign building and loan associations see sections 506-509 M. A. S.]

[Section 24 referred to is section 1056 M. A. S.]

[The fees provided for in the above section are changed by sections 1046 and 1047 M. A. S.]

The designation of agency required by the mandatory provision of section 1057 M. A. S. above printed is complied with by the following form:

Designation of Place of Business and Agency.

COMMONWEALTH OF PENNSYLVANIA, COUNTY OF PHILADELPHIA, SS.

It Is Hereby Certified, That the Wolverine Mining Company, a corporation organized under the laws of said Commonwealth of Pennsylvania, doth hereby designate that the "principal place where the business of such corporation shall be carried on in the State of Colorado" is the city of Boulder, in the county of Boulder, and that John D. Fleming, residing at said principal place of business, is the authorized agent of said company, upon whom process may be served.

Witness the corporate name and seal of said company and the signatures of its president and secretary this 2d day of January, A. D. 1917.

(CORPORATE SEAL.)

WOLVERINE MINING COMPANY,

Charles A. Lewis, President,

John W. Mickle, Secretary.

COMMONWEALTH OF PENNSYLVANIA, COUNTY OF PHILADELPHIA, SS.

I, John S. Wurts, Commissioner of Deeds for the State of Colorado, duly commissioned and sworn, in and for said county, do hereby certify that Charles A. Lewis, president, and John W. Mickle, secretary, of the within named corporation, who are personally known to me to be such president and secretary of said corporation, personally appeared before me this day and acknowledged the within instrument (in duplicate) to be their free and voluntary act and deed as such officers and the free and voluntary act and deed of said corporation.

Witness my hand and official seal this 2d day of January, A. D. 1917.

(SEAL.)

JOHN S. WURTS,

Commissioner of Deeds for Colorado.

Sec. 1059 M. A. S. Liability for Failure to File Documents.

A failure to comply with the provisions of sections 23 and 24 of this Act shall render each and every officer, agent and stockholder of any such corporation, so failing herein, jointly and severally personally liable on any and all contracts of such company made within this State during the time that such corporation is so in default.—R. S. '08, § 919.

[Sections 23 and 24 referred to are sections 1056 and 1057 M. A. S.]

Sec. 1044 M. A. S. Fees of Foreign Corporations.

Every corporation, joint stock company, or association incorporated by or under any general or special law of any foreign state or kingdom, or any state or territory of the United States beyond the limits of this State, having a capital stock divided into shares, shall pay to the Secretary of State for the use of the State, a fee of thirty dollars (\$30.00) in case the capital stock which said corporation, joint stock company or association is authorized to have, does not exceed fifty thousand dollars (\$50,000.00); but in case the capital stock thereof is in excess of fifty thousand dollars (\$50,000.00) the Secretary of State shall collect the further sum of thirty cents (\$.30) on each and every one thousand dollars of that proportion of such excess of capital stock as is represented by its corporate capital, property and assets employed and located in Colorado, and a like fee of 30 cents on each one thousand dollars (\$1,000.00) of that proportion of the amount of subsequent increase of stock as represented by the corporate capital, property and assets employed and located in Colorado.

Sworn Statements Required.

And every such foreign corporation, by its President and Secretary shall file with the certified articles of incorporation and the affidavits required, a sworn statement under its corporate seal, setting forth the entire amount of its capital and that proportion thereof which is represented by the corporate property, capital and assets employed and located in the State of Colorado. The said fee shall be due and payable upon the filing of the Certificate of Incorporation, Articles of Association, or Charter of said corporation, joint stock company or association in the office of the Secretary of State.

Disabilities.

And no such corporation, joint stock company or association shall have or exercise any corporate powers or hold or acquire any real or personal property, franchises, rights or privileges, or be permitted to do any business or prosecute or defend any suit in this State until the said fee shall have been paid.—L. '11, p. 255, § 1.

The above section 1044 M. A. S. does not apply to corporations engaged solely in interstate commerce.—*Savage v. Central Electric Co.*, 59 Colo. 66, 148 Pac. 254.

A foreign corporation which has never done any business in Colorado may sue without paying any fees to the state.—*Desserich v. Merle & Heaney Co.*, 48 Colo. 370, 109 Pac. 949.

The above printed sections 1056 and 1059 M. A. S. are held not repealed by the later Act of 1901, Secs. 1038, 1041 M. A. S.—*Cockburn v. Kinsley*, 25 Colo. App. 91, 135 Pac. 1112.

The conditions imposed on foreign corporations under the above printed sections may be summarized as follows:

1. They must file a copy of their articles with the Secretary of State.—Sec. 1056 M. A. S.

2. They must file a designation of agency and place of business. Sec. 1057 M. A. S.

3. They must obtain a certificate of authority. Sec. 1050 M. A. S.

4. They cannot "purchase or hold real estate in this State except as provided for in this Act," which obviously means compliance with the above items 1, 2 and 3.

5. Certain conditions are imposed before they can mortgage their property. Sec. 1057 M. A. S.

6. They must file Annual Reports, in default of which a personal liability is imposed. Sec. 1051 M. A. S.

7. They become subject to all laws regulating domestic corporations. Sec. 1057 M. A. S.

Where a foreign corporation is organized for the express purpose of doing business in this State, for instance to

operate a mine or manufactory, the provisions are plain and their justice not subject to reasonable complaint.

But there are thousands of corporations throughout the United States not organized in contemplation of ever entering this State and their officers and stockholders entirely ignorant of these local statutes and yet which, in the transaction of their affairs, may come to operate to a certain extent in Colorado. Mercantile corporations ship their goods to this State; manufacturing companies contract to supply machinery or erect buildings in this State; express companies cover Colorado as well as every other state; railroads become users of tracks; sleeping car companies run cars and buffets, and in innumerable instances affairs occur where a pretense may be made that they are doing business in Colorado.

The question is: Do such incidents bring them within the terms of section 1056 M. A. S. which covers all foreign corporations doing business within this State?

It is obvious that the attempt to strictly construe the "doing business" phrase would not only run it counter to the Interstate Commerce Act, but if enforced in every state where a company lands its goods or sends its agents or makes its contracts, would be a practical prohibition of its doing business at all.

Some of the statutes of other states which have been upheld, merely require a small fee to the Secretary of State, but the Colorado Acts demand the payment of large exactions, an annual tax and the same fees which are imposed on local companies.

In consideration of the drastic results which would follow strict construction, the courts have generally refused to hold the Acts operative in close cases, but the decision in *U. S. Rubber Co. v. Butler Co.*, below cited (132 Fed. 398), is to the other extreme.

By section 1059 M. A. S. all officers, agents and stockholders are made personally liable for debts of a foreign corporation contracted in this State while in default in

failing to file designation of agency, copy of articles, or statute under which organized. This personal liability is the only penalty. Their contracts made in this State while so in default are not void and they can sue and be sued upon them.—*Kindel v. Beck-Lithographing Co.*, 19 Colo. 310, 35 Pac. 538; *Helvetia Ins. Co. v. Allis Co.*, 11 Colo. App. 266, 53 Pac. 242.

By section 1057 M. A. S. they are "subjected to all the liabilities, restrictions and duties which are or may be imposed upon" domestic corporations of like character. And are not allowed to pledge or mortgage their property to the injury of local creditors, to the debts of which creditors then existing its mortgage is made to defer. Before mortgaging its property a published notice is required as stated in that section.

A suit to enforce personal liability under the above section 1059 M. A. S. is not penal in character, and may be brought in the proper court of any state.—*Leyner Eng. Works v. Kempner*, 163 Fed. 605.

A foreign corporation may not maintain an action in the courts of Colorado without complying with M. A. S. § 1044.—*King Copper Co. v. Dreher*, 68 Colo. 554, 191 Pac. 98.

Failure of a foreign corporation to comply with the statute must be pleaded in the first instance. If defendant answers to the merits the omission is waived.—*Watson v. Empire Co.*, 66 Colo. 284, 180 Pac. 685.

Sec. 1060 M. A. S. Citizens of This State Protected Against Reconstruction.

No foreign corporation doing business in this State shall be permitted to effect a reconstruction, by liquidation or otherwise, nor shall any such reconstruction or liquidation take effect as against any citizen of this State, unless all the rights, shares and interests of any citizen of this State shall have been or shall be protected, and the stock interests of any citizen of this State in such corporation shall have been or shall be fully recognized, and in its original condition without diminution in number, amount or face value.—R. S. '08, § 920.

Sec. 1061 M. A. S. Term of Existence Limited—Renewals.

No foreign corporation doing business in this State shall be allowed a term of corporate existence of any longer period than domestic corporations of like character; and every such foreign corporation doing business in this State shall be required to file a renewal certificate of its corporate existence and pay the same fees therefor as if such corporation were a domestic corporation organized under the laws of this State. But in no case shall the time be extended beyond the corporate existence of such foreign corporation in the state or country where it was originally organized.—R. S. '08, § 921.

A foreign corporation, having a corporate life exceeding twenty years, under the laws of New York, where organized, must comply with the statute requiring new filings upon the expiration of the twenty years, which is the corporate life of a domestic company.—*Iron S. Co. v. Cowie*, 31 Colo. 450, 72 Pac. 1067.

After twenty years it has no legal existence in this State.—*Holmes v. Jewett*, 55 Colo. 187, 134 Pac. 665.

Fees.

Foreign corporations upon filing their articles pay to the Secretary of State \$30, in case their capital does not exceed \$50,000. If in excess of \$50,000, the further sum of thirty cents for each \$1,000 of such excess, and at the like rate upon any increase of stock.—Sec. 1044 M. A. S.

Under the wording of that section, where all its capital is not local to Colorado, the foreign company certainly is not required to pay the percentage demanded on its entire stock.

On filing amended articles they pay the same fees as are paid by domestic companies.

The fee for filing copy of law under which organized is \$5 [§ 1046 M. A. S.]; designation of agency, \$5 [§ 1047 M. A. S.]. For filing impression of seal, \$2.50; certificate of stock paid up, \$2.50, a tax of five cents per \$1,000 on all stock so paid up in excess of \$50,000.—Sec. 1049 M. A. S.

The license tax is ten cents on each \$1,000 of the capital stock.—Sec. 6285 M. A. S.

Certificate of Authority.

Before authorized to hold real estate or do business a certificate of authority is required the same as of domestic corporations,—Sec. 1050 M. A. S

General Status of Foreign Companies—Comity.

The rights of foreign corporations depend upon the statutes of the State in which they are doing business, where they exist merely by the comity of that State.—*Utely v. Clark-Gardner Co.*, 4 Colo. 369.

A foreign corporation doing business in Colorado is nevertheless not a resident of the State (*Cook v. Hager*, 3 Colo. 386), and cannot claim a local residence in any particular county so as to demand change of venue under Sec. 292 of the Code.—*N. Y. Life Ins. Co. v. Pike*, 51 Colo. 238, 117 Pac. 899.

What Is, or Is Not, "Doing Business."

A foreign corporation suing to collect a debt contracted to it outside the State is not doing business in such sense as to come under the terms of the statute requiring it to pay a commission to the Secretary of State's office.—*Kephart v. Peo.*, 28 Colo. 73, 62 Pac. 946. While the court does not base its decision on that ground, it could broadly state that to deny the right to collect a debt or to defend a suit brought against it is an absolute denial of justice and in violation of the Bill of Rights.

A single purchase or a single act of business by a foreign corporation is not "doing business" under the statutes forbidding foreign corporations from doing business until certain conditions are complied with.—*Roseberry v. Valley Assn.*, 35 Colo. 132, 83 Pac. 637; *Craig v. Leschen Co.*, 38 Colo. 115, 87 Pac. 1143; *Colo. Iron Works*

v. Sierra Grande M. Co., 15 Colo. 499, 25 Pac. 325; Tabor v. Goss Co., 11 Colo. 419, 18 Pac. 537; Cooper Mfg. Co. v. Ferguson, 113 U. S. 727; Cockburn v. Kinsley, 25 Colo. App. 89, 135 Pac. 1112.

The note of a foreign corporation which has not complied is good (at least) in the hands of a bona fide transferee.—McMann v. Walker, 31 Colo. 261, 72 Pac. 1055.

The purchase by a foreign corporation of notes secured on lands in Colorado is not doing business in this State.—Miller v. Williams, 27 Colo. 34, 59 Pac. 740.

A foreign corporation having an established place of business in Colorado where it sells goods by a factor is doing business in this State, and it is immaterial that its goods are manufactured outside the State, and such corporation cannot maintain suit without designation of agency.—U. S. Rubber Co. v. Butler Co., 132 Fed. 398.

Disabilities.

The failure to file its designation of agency does not affect the right of the company to protect its rights by suit.—Utley v. Clark-Gardner Co., 4 Colo. 369.

These prerequisite acts do not prevent a foreign corporation from acquiring personal property in this State and they have the right to protect such property by suit.—Craig v. Leschen Co., 38 Colo. 115, 87 Pac. 1143.

None of the restrictions against foreign corporations apply to their soliciting business and taking orders and making contracts for delivery of their wares in this State.—Int. Tr. Co. v. Leschen Co., 41 Colo. 299, 92 Pac. 727; Bruner v. Kansas Co., 168 Fed. 218; Herman Bros. Co. v. Nasiacos, 46 Colo. 208, 103 Pac. 301.

Annual Reports.

Are required the same as demanded from domestic companies of like character.—Sec. 1051 M. A. S.

A foreign corporation having filed its first papers in February, 1896, no annual report from it was due until

the sixty-day period began in January, 1897.—*Fraser v. Mines L. Co.*, 16 Colo. App. 444, 66 Pac. 167.

A foreign corporation must file its annual report although it has failed to file copy of its charter and other papers required by Secs. 1056 and 1057 M. A. S.—*Nolds v. Hendrie & B. Co.*, 56 Colo. 322, 138 Pac. 22.

Pleading.

In suits by foreign corporations they need not set up in the first instance compliance with statutory conditions imposed on them before they can lawfully do business in this State—non-compliance with such conditions must be averred by the defendant.—*Illinois S. M. Co. v. Harrison*, 43 Colo. 362, 96 Pac. 177. And the fact that the judge knows of his own knowledge of such non-compliance does not justify the dismissal of the case.—*Utah Nursery v. Marsh*, 46 Colo. 211, 103 Pac. 302.

Where a corporation has failed to comply with the statutory conditions before bringing suit it may remove all disabilities by complying with those conditions before the trial.—*Int. Tr. Co. v. Leschen Co.*, 41 Colo. 299, 92 Pac. 727.

A statement in a pleading that a certain party was a Missouri corporation, when in fact it was a Kansas corporation, is an immaterial variance, when the material point was that it was a foreign corporation.—*Miller v. Williams*, 27 Colo. 34, 59 Pac. 740.

Wyoming Corporations.

The statutory requirements of Wyoming for the formation of corporations are substantially the same as those of Colorado so that a form given in this book for any mining or business corporation would be valid in that state, noting, however, that the term of existence is 50 years instead of 20 years.

Within thirty days after filing the articles, notice of incorporation must be published and proof of such appli-

cation must be filed with the Secretary of State. Also within ninety days a process agent must be designated.

The personal liability of stockholders seems to extend only to the payment of the face value of the stock but the directors are liable for running into debt beyond the amount of the capital of the corporation.

Cumulative voting is allowed to stockholders.

The filing fees are \$10 for the first \$10,000 of the stock.

\$15 where in excess of \$10,000 and not more than \$25,000.

\$20 where the stock exceeds \$25,000 and is not more than \$50,000.

\$25 where it exceeds \$50,000 and is not more than \$100,000.

If the stock exceeds \$100,000, \$25; and 20 cents for each \$1,000 in excess of \$100,000.

For filing amendments increasing the capital stock, the fees shall be at the same rate as for filing the original articles of incorporation.

For filing other amendments, \$5.

For filing each certified copy of the charter or articles of incorporation or amendments thereto, of any foreign corporation, the same fee shall be charged as is herein provided for domestic corporations."—Sec. 5038 Com. Stats., 1920.

Oil companies are allowed right of way for pipe lines over state lands.

There are statutory provisions for collection of assessments by suit much more simple than those of Colorado; no flat tax is assessed against the stock.—Compiled Statutes of Wyoming, 1920 Secs. 5037-5452.

Advertising or dealing in the shares of a Wyoming or any other foreign corporation does not make the corporation liable for the flat tax nor bring it within that class of corporations which are taxed for doing business in this state.

CHAPTER LXXIII.

DEFUNCT CORPORATIONS.

Sec. 1037 M. A. S. Defunct Corporations—Publication—Declaration.

If any corporation has, or shall hereafter fail, for a period of five (5) years to pay the annual state corporation license tax, and other fees required by law, or to make any report the Statutes require, the Secretary of State shall prepare a list of such corporations and shall publish the same in this state in a newspaper of general circulation in the county where the principal office of the company is located for one issue. And upon said publication being completed, a proof of publication being filed thereof with the Secretary of State by such newspaper, said corporation shall thereupon be deemed defunct and inoperative and no longer competent to transact business within the State of Colorado and shall thereupon lose the right to protection against the adoption of its name or a similar name, and the Secretary of State shall accept for filing any certificates of incorporation of any company bearing the same or similar name, and this provision shall apply to corporations which have heretofore become defunct and inoperative by virtue of existing law; and the Secretary of State shall make proper notations in red ink, opposite the name of any such corporation in the index books, indicating the status of such defunct and inoperative corporations.

Provided, that any such defunct corporations upon the payment of all such delinquent taxes and fees and an additional fee of five dollars (\$5.00) for a Certificate of Reinstatement, and upon changing its name by amendment so that the same will not conflict with any corporate name adopted by any corporation subsequent to its becoming defunct and inoperative as above provided, shall thereupon become reinstated, revived and operative.

The annulment of the corporate life of such corporation as aforesaid shall not take away or impair any remedy given against such corporations, its stockholders, or officers, for any liabilities incurred previous to such annulment.—L. '19, p. 358, § 13, amending L. '13, p. 222, § 1, which amended L. '11, p. 253, § 1.

The lists of delinquents published under these Acts include much more than half of all the original filings,

but the Act is in force continuously and applies to all future defaults.

A corporation becomes defunct on failure for three years to pay the license tax or for three years to file its annual report.

Failure in either as well as in both respects makes the corporation defunct, but the default is not complete until the publication has been made.

A defunct corporation in the words of the Act is "no longer competent to transact business within the State."

To revive its corporate life it must pay up the delinquent taxes, but is not required to make any amends in the matter of its annual reports. Liability for such failure by the time the three years had elapsed would have been either enforced by suit or barred by the one year limitation Act.

The words "such delinquent taxes" may mean the taxes of the three last years or may mean the entire number of years, during which the license tax was unpaid. The construction ought to be, the last three years only.

The practical questions most apt to arise are:

1. Can a defunct corporation redeem its property from a tax sale?
2. Can it convey what property it may own to a new company or to anyone else?
3. What becomes of its assets?

The General Incorporation Act at the outstart provides no protection against the launching of companies having no financial means to carry out their plans.

This leads to the improvident initiation of corporate life. No sooner is such life begun than the corporations pay a heavy annual tax, imposed entirely irrespective of their assets or the value of the stock. The birth is encouraged, but there is no provision to sustain the life thus started.

The result is that the corporation falls into the defunct class. Courts ought not to construe an ambiguous statute so as to be too severe on this class of corporations.

1. If the county treasurer accepts the money and issues his certificate, as we have no doubt he rightfully may, the redemption ought to stand.

2. The second question is more doubtful and depends on the answer to the third.

3. The statutes make provision for a dissolved company—section 1030 M. A. S., and we apprehend that a defunct corporation is a dissolved corporation and comes under the terms of that section.

In such case its assets become vested in its last board of trustees and, answering the second question, it falls upon them to transfer title to the real and personal property. Certainly also such trustees could redeem from tax sale and upon such redemption the title would vest in them as such trustees.

CHAPTER LXXIV.

MUNICIPAL CORPORATIONS.

Municipal corporations are the political subdivisions of the State. They include cities and towns, while counties, which are geographical subdivisions, are not strictly municipal corporations.

There were 17 counties created in 1861. They are now increased to 63.

The corporate style of a county is "The Board of County Commissioners of the County of ———." [§ 121 M. A. S.], which is an awkward nomenclature, but indicates that the corporate or governing power is in the board.—*Roberts v. Peo.*, 9 Colo. 458 (467), 13 Pac. 630. All other county officials are merely executive officers.

There is no legislative power delegated to a county, nor has it any judicial power unless the action of the

board in allowing or disallowing claims may be so considered.

Before a county can be sued, the claim must be presented to the board and upon its refusal to allow the demand, the creditor may appeal to the District Court [§ 1335 M. A. S.], or may bring an original action.—Park County v. Locke, 2 Colo. App. 511, 31 Pac. 352; Park County v. Jefferson County, 12 Colo. 585, 21 Pac. 912.

And a judgment against any kind of municipal corporation is not collectible by execution, but by mandamus to compel the levy of a tax or other special proceedings. See Secs. 1295 and 1320-a M. A. S. At common law they were not subject to garnishment, but are now so subject by Act of 1911, p. 445, §§ 4342, 4343 M. A. S.

Denver has a corporate existence as the City and County of Denver by an amendment to the Constitution known as Article XX, which gives it a combination of city and county powers.

This amendment was so drawn as to lead to interminable confusion only partially now settled by the Supreme Court.

It is not exempt under its anomalous charter from the operation within its territory of penal statutes of general application: in the instant case, the Eight Hour Law.—Keefe v. Peo., 37 Colo. 317, 87 Pac. 791.

Blackhawk, Central City, Georgetown and Golden still retain their Territorial Charters. But they are subject to statutory amendment and there are many such amendments to these local charters.

Two Classes.

Cities of over 15,000 population belong to the first class. Over 2,000 up to 15,000 form the second class. Municipalities having only 2,000 or less population are styled Towns. Their corporate powers are enumerated in the Towns and Cities Chapter of the Statutes. The

eration is so extensive that it practically extends to all forms of social questions.

Commission Form.

By the terms of Sec. 6 of Article XX of the Constitution, amended by Act of 1913, page 669, cities may hold a Charter Convention and adopt any form of government.

Under this authority several have adopted the Commission form and any other scheme of municipal happiness, however novel or utopian, may be experimented with under this law which stretches to its bounds, the Doctrine of Popular Sovereignty.

Home Rule.

The practical effect of this so-called Home Rule Amendment is to prevent any uniform or systematic form of municipal government and to allow the passage of oppressive ordinances of all sorts without the restraint of legislative protection, the entire section, and especially the amendment of 1913, being a calamity with little or no compensation.

Political and Non-Political Duties.

A distinction is made between the political duties of a Municipal Corporation and those which are non-political. In the former class it is not liable for the dereliction of its agents and in the latter it is liable the same as an individual.—*Denver v. Davis*, 37 Colo. 370, 86 Pac. 1027.

Under this distinction a city is not liable for the fault of its health, police and fire officers, nor for failure to enforce its ordinances, but it is liable for torts growing out of its contracts or for the non-performance of duties which would be required of citizens acting individually under like conditions.

Of course this rule must bring out many close cases and we may consider the instances where it has been applied.

It has been held for loss by fire kindled by negligence of the health commissioner in care of the city dumping ground.—*Denver v. Davis*, 37 Colo. 370, 86 Pac. 1027.

For failure to keep its streets, bridges and drains in reasonable repair.—*Denver v. Dunsmore*, 7 Colo. 328, 3 Pac. 705; *Denver v. Maurer*, 47 Colo. 209, 106 Pac. 875; *Denver v. Rhodes*, 9 Colo. 554, 13 Pac. 729.

For neglect of Park Commission to keep amusement devices in order.—*Canon City v. Cox*, 55 Colo. 264, 133 Pac. 1040.

In constructing water works a city is acting in its private capacity.—*Golden v. Western L. Co.*, 60 Colo. 382, 154 Pac. 95.

Where Not Liable.

The city is not liable for injuries caused by negligent care of its calaboose.—*McAuliffe v. Victor*, 15 Colo. App. 337, 62 Pac. 231.

The city is not liable for accidents arising from trifling defects in a highway from which danger could not have been reasonably anticipated.—*Pueblo v. Smith*, 57 Colo. 500, 143 Pac. 281.

Demand.

Before suit against a city for damages can be filed notice must be served under the terms of R. S., Secs. 6660, 6661. An irregularly served notice was sustained in *Canon City v. Cox*, 55 Colo. 264, 133 Pac. 1040.

Ordinances.

A city can only pass such ordinances as are authorized by its charter or by general law.—*Durango v. Reinsberg*, 16 Colo. 327, 26 Pac. 820.

Notwithstanding the above apparently rigid rule there is a constant tendency to enact ordinances on every conceivable subject and, when authorized to deal with the subject, to impose under the color of regulations, matters of detail to such an extent as to be tyrannical and oppressive.

It is assumed as a general rule that only those things are forbidden to the citizen which are in themselves wrong, or, if not wrong, the practice of which works inconvenience to other citizens or which tend to injure the public health or threaten to provoke a breach of the peace. Discarding all these limitations, city ordinances are often arbitrary, unjust, inquisitorial and needlessly oppressive. The only practical limitation is where the courts interfere to declare certain ordinances void because not authorized, or because unreasonable, discriminative or oppressive.

It is of course impossible to enumerate all the instances where they overstep prescribed bounds but the most common instances are the attempt to raise money by taxation in the forms of license and delegating the allowances of franchises and privileges to private preferences instead of granting them under fixed rules without discrimination.

Durango v. Reinsberg, 16 Colo. 330, 26 Pac. 820, states the general principles which limit the municipal power to enact penal ordinances.

An ordinance forbidding livery stables within a certain distance from a school house is void. The city cannot treat as a nuisance a business which is not such per se.—*Phillips v. Denver*, 19 Colo. 179, 34 Pac. 902.

The city cannot prosecute for illegal sale of the liquor induced by its own connivance.—*Ford v. Denver*, 10 Colo. App. 500, 51 Pac. 1015.

Billboards and Handbills.

An ordinance forbidding use of billboards except under drastic and prohibitive conditions was held void in the

case of the *Curran Co. v. Denver*, 47 Colo. 221, 107 Pac. 261.

The court condemned the pretended right of the city to grant or refuse permits to individuals at its discretion, but made no reference to the fact that the only substantial argument against billboards is that they interfere with the advertising monopoly of the newspapers.

An ordinance forbidding distribution of handbills was held valid in *Wettengel v. Denver*, 20 Colo. 552, 39 Pac. 343, on a most unsatisfactory line of reasoning—because they might ultimately get scattered by the wind and “frighten horses.”

Automobiles.

Automobiles are protected from municipal oppression by section 5008t M. A. S., to the extent that no license tax or registry may be imposed in addition to what is demanded by the State. But that section has not been construed to forbid “regulation” often carried to oppressive extremes.

Swarthmore Borough v. Taylor is a case which fairly states the unlimited annoyance from a construction which would allow every town through which a car passes to regulate its lights and speed. 19 Pa. Dist. Rep. 962.

A Denver automobile ordinance was upheld in *Livingston v. Barney*, 62 Colo. 528, 163 Pac. 863, holding the injured motorcycle guilty of contributory negligence in not observing it.

A limitation of so many miles per hour in a speed ordinance is not a permission to reach that limit under any and all circumstances. The question of excessive speed in such case is for the jury.—*Adair v. McNeil*, 95 Wash. 160, 163 Pac. 393.

Jitney busses seem to have little protection against municipal legislation and an ordinance imposing taxes and conditions evidently intended to make the jitney a criminal was upheld in *Allen v. Bellingham*, 95 Wash. 12, 163 Pac. 18. This was followed by the perhaps un-

precedented decision that on the bond demanded of the jitney company the surety company was liable to the full amount of the \$2,500 penalty for each person injured—four out of the nine judges dissenting.—*Salo v. Pacific Coast Casualty Co.*, 95 Wash. 109, 163 Pac. 384. But in *Jitney Bus Assn. v. Wilkesbarre*, a similar ordinance was held void. 256 Pa. 462. 100 Atl. 462.

Licenses.

A license is only a special form of taxation. The License Cases, 5 Wall. 463.

It is defined in *Paton v. Peo.*, 1 Colo. 77, as “a right given by some competent authority to do an act which without such authority would be illegal.” But the word is much broader and covers the levy of special taxes on any sort of occupation, which tax it is held the State may exact.—*Smith v. Farr*, 46 Colo. 364, 104 Pac. 401.

In *Greene v. Loveland* a license tax on plumbers was sustained.—51 Colo. 593, 119 Pac. 622. A license fee may be required of commercial travelers but no discrimination is valid in favor of home products.—*Smith v. Farr*, *supra*; *Ames v. Peo.*, 25 Colo. 508, 55 Pac. 725.

A charter power to license occupations does not include the right to prohibit them.—*Krier v. Walsenburg*, 26 Colo. App. 150, 141 Pac. 505. Nor can the right to license be made discretionary with the city authorities.—*Id.*

An ordinance which makes membership in a private organization, in this instance the Ticket Brokers' Association, a condition precedent to the right to a license is unreasonable and void.—*Munson v. Colorado Springs*, 35 Colo. 506, 84 Pac. 683.

An ordinance giving to a committee the right to pass on and grant or refuse a drug store license is void. A concurring opinion denies in toto the right to the city to demand any license at all based on fitness to practice pharmacy.—*Seattle v. Gibson*, 96 Wash. 425, 165 Pac. 109.

In a California case the City of Los Angeles attempted to create a Board of Charities and to suppress all charitable organizations not licensed by such board and in particular the Salvation Army. The City of Venice, in the same state, prohibited all music on the streets or on vacant lots without a permit obtainable only by favor. In both cases the ordinance was held void because unreasonable and because of the arbitrary license required. Both cases express the principle that amusements and occupations in themselves lawful cannot be prohibited under the pretense of regulation.—In *re Dart*, 172 Cal. 47, 155 Pac. 63; *L. R. A.* 1916D 905; *Ex p. Wisner*, 32 Cal. App. 637, 163 Pac. 868.

There are two recent cases from Colorado Springs which are instructive as to the limitation on the right to license. In *Colorado Springs v. Simon*, 61 Colo. 315, 157 Pac. 194, the city had passed an ordinance increasing the Auction License fee from \$100 per annum to \$50 per day. It was held void because prohibitive and intended to be so, but without any discussion of the subject. A more oppressive instance could not be imagined. In the second case the city had levied a pole and mileage tax, ostensibly for regulation, but as defendant alleged for revenue. The court held that if its exactions were later found to exceed the costs of regulation, the ordinance would be modified.

This carries the presumptions in favor of the validity of such ordinance to the extreme limit. While conceding the proposition that all presumptions are in favor of the legality and the reasonableness of a license, the Court does not consider the fact that the power to license and the right to regulate are an almost irresistible temptation to raise revenue by this easy method and to drive out of existence any investment that may be obnoxious to factions in control of the city government.—*Colorado Postal Tel. Co. v. Colo. Springs*, 61 Colo. 560, 158 Pac. 816.

The so-called Loan Shark State License Act of 1913, Secs. 5008a-5008e M. A. S., was upheld in *Cavanaugh v. Peo.*, 61 Colo. 292, 157 Pac. 200.

Counties.

Are quasi corporations and not strictly municipal corporations.—*Sterner v. La Plata County*, 5 Colo. App. 379, 38 Pac. 839; *Colburn v. El Paso County*, 15 Colo. App. 90, 61 Pac. 241.

As such quasi corporations they may contract within the scope of their powers like other bodies really corporate. Nor does it make any difference that the contract overlies the term of office of the contracting Board.—*Ligget v. Kiowa County*, 6 Colo. App. 269, 40 Pac. 475.

A contract with the county to perpetually maintain a court house on certain lots is void.—*Colburn v. El Paso County*, 15 Colo. App. 90, 61 Pac. 241.

Within the scope of their powers the Board of County Commissioners is supreme and they possess all reasonably necessary implied powers.—*Gunnison County v. Davis*, 27 Colo. App. 501, 150 Pac. 324. And this power is not taken away by the Public Examiner Act of 1909, Secs. 5619-5629 M. A. S.

A record is not always necessary to make the action of the board binding.—*Mugrage v. Peo.*, 26 Colo. App. 27, 141 Pac. 522.

Torts, Counties.

In the absence of statute to such effect, a county is not liable for its torts: in this instance, suit on accident from defective bridge.—*El Paso County v. Bish*, 18 Colo. 474, 33 Pac. 184.

This *El Paso County* case attempts to give the reason for the non-liability of a county where a town or city could be held responsible.

The same case was quoted where it was alleged that the county had assumed a debt growing out of an illegal

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tax sale and the county was held immune.—*Pitkin County v. Ball*, 22 Colo. 125, 43 Pac. 1000.

The county is not liable for non-performance of acts left discretionary to the board.—*Fairplay v. Park County*, 29 Colo. 57, 67 Pac. 152.

CHAPTER LXXV.

IRRIGATION AND DRAINAGE DISTRICTS.

Irrigation Districts are made bodies corporate by the terms of sub-division XII of chap. 86 of Mills Annotated Statutes beginning with section 3965.

The amendment of 1917, page 290, states the relation of these districts to the Federal Reclamation Acts and is to be considered in connection with Water Users Associations, ante, page 63.

Drainage districts are bodies corporate under the Act of 1911, p. 311; amended 1913, p. 252, 1915, pp. 292-297, and 1921, pp. 275, 279, 280 [§§ 3647-3727 M. A. S.].

These drainage and irrigation districts are pure legislative creations and have no corporate powers except those specially given by the Acts creating them, the most material item being their right to make an issue of bonds.

The Irrigation District Law was held to be constitutional in *Anderson v. Grand Valley District*, 35 Colo. 525, 85 Pac. 313.

In *Ahern v. High Line District*, 39 Colo. 409, 89 Pac. 963, the relations of the district to the county commissioners are construed at length on a test of the validity of a bond issue and the whole organization of the district was set aside for want of conformity to the statute.

In *Montezuma District v. Longenbaugh*, 54 Colo. 391, 131 Pac. 262, a signer of the petition was held estopped to contest the facts set up in the petition.

Lands once assessed cannot be reassessed to make up deficiency caused by failure of other lands to pay.—*Norris v. Montezuma Dist.*; 240 Fed. 825.

Wilder v. South Side District, 55 Colo. 363, 135 Pac. 461, decides that land is held for the district bond issue, where the owner failed in proper time to protect himself under the Act by proceedings to exclude his land. *Thomas v. Patterson*, 61 Colo. 547, 159 Pac. 34, was a contest between two bond issues and involving the rights of coupon holders.

The district may exact bond under the statute and in addition may demand other security from its ditch contractors.—*Noonan v. Stein*, 56 Colo. 64, 136 Pac. 1181.

Under Secs. 3981 and 3983 M. A. S. an irrigation district may provide for a tax, which it is the duty of the county to collect.—*Nile Irrigation District v. English*, 60 Colo. 406, 154 Pac. 760; *Orchard Mesa Co. v. Canon*, 61 Colo. 347, 157 Pac. 192. Deficiencies are to be met by a further levy.—*Eberhart v. Canon*, 61 Colo. 340, 157 Pac. 189.

Irrigation district bonds are negotiable.—*Shelton v. Gas Securities Co.*, 239 Fed. 653.

The Act of 1905 as to assessments is construed in *Norris v. Montezuma Dist.*, 240 Fed. 825. A corporation may be formed to take over the assets of an irrigation district.—Sec. 3653 M. A. S.

Mine Drainage Districts.

Mine Drainage Districts are made corporations by Act of 1911, Secs. 4905-4930 M. A. S. But this law seems to remain a dead letter, as we learn of no organization completed under it.

CHAPTER LXXVI.**SCHOOL DISTRICTS.**

School Districts are made Municipal Corporations, the corporate style being "School District No. — in the County of — and State of Colorado." Under such name they may hold property and be a party to suits and contracts the same as municipal corporations.—Sec. 6643 M. A. S.

High School Districts are also bodies corporate under the style "— County High School District in the State of Colorado."—Sec. 6726 M. A. S.

They are governed by the terms of chap. 141 Mills Annotated Statutes, entitled "Schools."

The "School of Mines."

The "School of Mines" at Golden is a separate corporation, and a State Institution authorized by section 4 of Article XVI of the Constitution.—Chap. 142 Mills Annotated Statutes.

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